Super Clarity

SMSF Business Real Property Info Sheet: July 2026

The information sheet summarises the key concepts relevant to business real property for self-managed superannuation funds ("SMSFs") under **SMSFR 2009/1** and the Superannuation Industry (Supervision) Act 1993 ("SISA").

The distinction between commercial property and business real property has never been more important than now. Recent reforms to SMSF borrowing for residential property purchases have fundamentally changed its significance.

Increasing reliance on SMSFR 2009/1 will help determine whether a residential property satisfies the business real property ("BRP") definition, as the Commissioner's approach focuses on **how the property is physically used** rather than on its zoning, ownership, or intended purpose. BRP is a legal concept, not a property category.

1. Basic Concept

Business real property is a concessional category of real property relevant to SMSF dealings with related and unrelated parties. It allows certain acquisitions, leases and investment arrangements that would otherwise be restricted, provided the statutory requirements are met.

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2. Definition

Business real property, in relation to an entity, broadly means an eligible interest in real property where the underlying real property is used **wholly and exclusively in one or more businesses**, whether or not the business is carried on by that entity. It does not include an interest held in the capacity of beneficiary of a trust estate.

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3. Two Threshold Requirements

- The relevant entity must hold an eligible interest in real property.
- The real property must satisfy the business use test: it must be used wholly and exclusively in one or more businesses at the time of acquisition and at all times afterwards.

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4. Eligible Interests

- Freehold interests in real property.
- Leasehold interests in real property, where there is a legally enforceable right to exclusive possession for a period of time.
- Assignable or transferable interests in Crown land, other than leasehold interests.
- Fixtures attached to land form part of the real property; separate chattels, licences and contractual rights generally do not.

5. Relevant Entity

The **definition is applied to the entity relevant** to the transaction. For an SMSF acquiring property from a related party, the property must be business real property of the related party at the time of acquisition. For leasing arrangements, the focus is generally on the entity granting the lease or lease arrangement.

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6. Business Use Test

- The test **focuses on the use of the underlying land**, not merely the legal interest held by the entity, which can include residential property.
- Physical use of the land is central: activities, operations or actions occurring on the land are assessed. Commercial zoning is not enough.
- The use must be in one or more businesses, which may be carried on by the owner, tenant, occupier or another entity.
- The status of the property is determined at the relevant point in time, with surrounding circumstances considered to identify enduring use rather than temporary or contrived use.

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7. Wholly & Exclusively

- The threshold requires the property to be used in one or more businesses to the exclusion of other substantive uses.
- The test is applied as a composite, practical assessment rather than a strictly literal area-by-area test.
- Unused portions may not prevent the test from being met if the property is used in business to an appreciable degree.
- Minor, insignificant or trifling non-business use may be disregarded under a de minimis approach.
- Substantive private, domestic or non-business use will generally prevent the property from qualifying.

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8. Business Meaning

A business includes a profession, trade, employment, vocation or calling carried on for profit, including primary production and professional services, but does not include an occupation as an employee.

Whether a business exists **is a question of fact and degree**, assessed by ordinary business indicators such as scale, repetition, organisation, commercial character, record keeping and continuity.

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9. Primary Production Rule

For real property used in one or more primary production businesses, limited domestic or private use may be permitted where **the area used primarily for domestic or private purposes does not exceed 2 hectares** and that use is not the predominant use of the property. Simply owning rural land is insufficient.

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10. Related-party Acquisition Rule

An SMSF is generally prohibited from intentionally acquiring assets from a related party. A key exception applies where the asset is business real property of the related party and the **acquisition occurs at market value**.

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11. In-house Asset Implications

Real property leased by an SMSF to a related party, or subject to an enforceable lease arrangement with a related party, is generally not treated as an in-house asset if the SMSF's interest in the property is business real property.

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12. Common Exclusions & Limitations

- Interests held as a beneficiary of a trust estate are excluded.
- Shares in a company do not confer an eligible interest in real property owned by the company.
- Units in a trust generally do not themselves constitute business real property.
- Licences, contractual rights, water rights and other non-real-property assets are not business real property.
- Residential or mixed-use property requires careful analysis of actual use; the character of the building is not determinative.

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13. Timing and evidence

- Business real property status must be tested at the relevant compliance point, including acquisition, lease commencement and relevant in-house asset testing times.
- Evidence should support both eligible interest and business use.
- Market value should be documented for related-party acquisitions and ongoing related-party arrangements.
- Lease arrangements should be commercial, legally enforceable and consistent with arm's length terms.
- BRP status should be reassessed whenever there is a material change in the property's use
- Temporary or artificial business use is unlikely to satisfy the business use test.

14. Practical Examples

Event	BRP Tested?
Acquisition from a related party	✓ Yes – at acquisition
Commencement of related-party lease	✓ Yes
Change in use during ownership	✓ Reassess if relevant to a SIS provision
In-house asset exemption	✓ Ongoing, if reliance on the exemption continues
Sale of the property	✗ Generally not relevant
Annual financial statements	✗ No standalone BRP test, but has the property's use changed during the year as an ongoing factual condition

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15. Professional checklist

- Identify the relevant entity for the transaction.
- Confirm the entity holds an eligible interest in real property.
- Determine the actual physical use of the land.
- Confirm the use is in one or more businesses.
- Assess whether any non-business use is substantive or merely minor, incidental or trifling.
- Check whether trust, company, licence or contractual structures affect eligibility.
- Confirm market value and arm's length terms.
- Retain contemporaneous evidence for audit and compliance purposes.

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16. Key Takeaways

✓ Business real property depends on **actual use**, not zoning.
✓ Commercial property is not automatically BRP.
✓ Residential property can qualify where wholly and exclusively used in a business.
✓ Mixed-use properties require careful analysis.
✓ Temporary vacancy does not necessarily destroy BRP status.
✓ The residential LRBA reforms make SMSFR 2009/1 more relevant than when first issued.
✓ Document the BRP analysis before entering into any borrowing arrangement.

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