

# Thinking of a Christmas stay in your SMSF property? Think again!

If your SMSF owns a beach house, country cottage or apartment that **feels** like the perfect Christmas getaway, this is your friendly end-of-year reminder: you and your family can't use it over the Christmas and New Year period, not even "just for a week," and not even if it's sitting vacant.

It's one of the most common SMSF traps, and it can lead to serious penalties. Here's why, in plain English.



## Why personal use is off-limits

SMSFs receive generous tax concessions but they come with strict rules. The big one is the sole purpose test. This means your SMSF must exist **only** to provide retirement benefits to members (and their dependants if a member dies).

Using an SMSF-owned property for a holiday gives you a personal benefit **before retirement**, which fails that test. The ATO is very clear: residential property held by an SMSF can't be lived in, stayed in, or used as a holiday home by members or related parties.

"Related parties" covers anyone closely connected to you or the fund, including all fund members, your spouse, children (including adopted children), and wider family like parents, grandparents, siblings, uncles, aunts, nephews and nieces. It also extends to

your business partners and any companies or trusts linked to you.

So even if the place is empty for a few weeks and you think "no harm done," the rules say otherwise.

## What if we pay market rent?

This is where people try to get clever and where things still go wrong.

Even if you pay what looks like market rent, leasing residential property to a member or relative is generally prohibited and can trigger other breaches.

One key problem is the in-house asset rule. If your SMSF leases an asset to a related party, that asset is usually treated as an in-house asset, and in-house assets must stay under 5% of the fund's total value.

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## Thinking of a Christmas stay in your SMSF property? ... cont

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Because a holiday home is often a large chunk of an SMSF's value, renting it to a related party almost always pushes you over that limit, unless your SMSF is extremely large.

And even if you somehow manage to remain under 5%, the ATO may still say the fund was being run partly for your lifestyle, not purely for retirement which brings you right back to the sole purpose test.

The bottom line is that paying rent doesn't make it okay.

### What if we are retired – can we use the holiday home then?

The answer is still no. Reaching preservation age or retiring doesn't automatically give you the right to stay in or live in a property owned by your SMSF. The property remains a fund asset and using it personally would still be considered personal use of an SMSF asset.

If you want to live in the property after retirement, the usual pathway is to transfer the property out of the SMSF into your own name. This is called an in-specie transfer, which simply means the fund transfers the asset to you personally rather than selling it for cash.

Once the property is in your personal ownership, you can use it without breaching the sole purpose test, because it's no longer an SMSF asset and you're not receiving a benefit from the fund.

However, an in-specie transfer can only happen after you've met a condition of release, for example, retiring after reaching preservation age, or stopping gainful employment after age 60, meaning you're legally allowed to access your super.

Alternatively, you may be able to buy the property from the fund yourself, provided the sale is conducted on a genuine arm's-length, commercial basis.

It's also important to get advice first, because transferring property out of an SMSF can have tax consequences, including potential capital gains tax (CGT).

### What happens if you break the rules?

Breaches around personal use of SMSF assets are treated seriously. Possible consequences include:

- » Significant administrative penalties on each trustee
- » Being forced to unwind the arrangement
- » Trustees being removed or disqualified
- » And, at the very worst, the fund losing its complying status (which can mean a huge tax hit).

That's a steep price for a week at the beach.

### What can you do instead?

If your SMSF owns a holiday-style property, the safe approach is simple:

- » Rent it to unrelated tenants at market rates, with a proper lease and evidence to support the rent
- » Treat it like a real investment, not a family asset
- » If you want a holiday there, book somewhere else like any other traveller.

### Final word

At this time of year it's easy to blur the lines between "investment property" and "our holiday place." But with an SMSF, the lines are firm. If you're unsure about what's allowed, how your property is being used, or whether any past use could create an issue, contact us. We can explain the rules in your situation and help you keep your SMSF compliant while protecting your retirement savings. 💰

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