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# **A guide to purchasing a commercial property using your Small Self- Administered Scheme (SSAS)**

# **In this guide, Lee Gaddes, Property Solicitor, explains the role and value of a commercial property purchase through a Small Self-Administered Scheme (SSAS), including the important legal considerations required.**

Investing part of your retirement savings into commercial property through a special type of pension, called a Small Self-Administered Scheme (SSAS), can be a shrewd move.

It offers tax advantages and gives you direct control over a valuable business asset.

However, moving money from a pension fund into property is much more complicated than a standard house or office purchase. It's a journey that demands close attention to legal rules, pension regulations, and specific property transfer procedures.

This guide describes the five essential legal stages you must follow when using a SSAS to buy commercial property. I'll break down the technical terms into clear, understandable language whilst staying true to the legal principles and terminology that protects your investment.

**There are five key elements to this guide:**

- 1.What is a SSAS? The Trust's legal identity**
- 2.Commercial property purchase: navigating transactional conveyancing**
- 3.Lease on completion to a commercial tenant**
- 4.Declaration of Trust: the governing legal agreement**
- 5.Refinance**



# 1. Understanding the SSAS: the pension's legal identity.

Before moving ahead with a commercial property purchase, it's important to understand exactly what your SSAS is. Legally, it's not just a long-term pension savings account. A SSAS is a statutory trust. This means it is a legally created arrangement, set up under UK pensions law and closely monitored by the tax authorities (HMRC) and The Pensions Regulator.

This structure is the foundation of everything that follows, and it has three critical effects on your property purchase:

- **Trustee ownership:** when you buy the property, it is legally owned by the Trustees of the SSAS (usually the scheme members, who are often the company directors). The property is held on trust for the benefit of the members, who are the beneficiaries. This means that the property is not owned by the sponsoring company or by you as an individual. Every legal document, from initial offers to the final Transfer Deed (the document that changes ownership), must clearly list the owners as "The Trustees of the [Name of SSAS]."
- **Fiduciary duty:** The Trustees are not just casual owners; they have a heavy responsibility called a fiduciary duty. This is a legal obligation to act with great care (prudence) and only in the best financial interest of all the beneficiaries (the scheme members). The property purchase must be justified as a rational, good-value pension investment, not a way to sneak tax-free cash out or give an unauthorised member benefit (something that unfairly benefits one member over the others).
- **Permitted Investments:** commercial property is considered a permitted investment. However, the SSAS is strictly forbidden from holding taxable property, which primarily means residential property. If you are looking at a property with flats above a shop (a mixed-use property), your legal team must conduct rigorous due diligence to ensure the residential element is either excluded or clearly separate.

This is where the Professional Scheme Administrator is vital. They are your compliance director, ensuring the whole process adheres to HMRC rules before they agree to release the pension funds for the purchase.

## 2. The property purchase: navigating transactional conveyancing.

The actual process of buying the commercial property follows a standard legal roadmap, known as conveyancing, but with extra pension-specific legal checks.

### Legal due diligence and title

The SSAS's solicitor conducts an in-depth investigation into the property's history and status as a key part of their legal due diligence. This involves checking the property's title (the legal proof of ownership), planning permissions, and results from various mandatory searches (e.g., environmental, local authority, drainage).

**The 'arm's length' principle:** this is the most critical check if you are buying the property from a company or person connected to the SSAS. (e.g., buying your current business premises from your sponsoring employer). HMRC requires the transaction to be on fully commercial terms, just as if you were buying from a stranger.

- The valuation requirement: to legally prove the arm's length principle, the Trustees must get an independent, professional valuation from a qualified RICS (Royal Institution of Chartered Surveyors) surveyor before signing the Contract for Sale. This valuation legally justifies the purchase price and acts as your shield against future challenge from HMRC.

### Contract and funding

- The Contract: the contract for sale is the legally binding agreement. It must accurately identify the buyers as "The Trustees of the SSAS."
- Borrowing (gearing): if the SSAS needs a loan to fund part of the purchase, the maximum you can borrow is legally restricted to 50% of the SSAS's net asset value.
- The non-recourse covenant: this is a mandatory legal requirement for all SSAS borrowing. The loan must be non-recourse. This means the lender can only secure the loan against the acquired property itself. They cannot seek repayment from the SSAS's other assets (like cash or shares) or the personal wealth of the Trustees. Your solicitor must ensure this non-recourse covenant is explicitly written into the mortgage deed and loan agreement.

When everything is ready, your legal team manage the payment and ensure all necessary Stamp Duty Land Tax (SDLT) is calculated and paid correctly.

Finally, the Transfer Deed (TR1) is submitted to HM Land Registry to formally change the legal ownership.

### 3. The Lease: transforming Trustees into landlords.

The moment the SSAS Trustees legally own the property, it must be rented out immediately on a proper, commercial basis. This is the legal pivot point: the SSAS Trustees now become the Landlord.

In the most common scenario, the property is leased back to the sponsoring employer company (a connected party). This is allowed, but the lease must rigidly stick to the Arm's Length Principle and represent genuine commercial reality.

#### Key legal lease provisions

The solicitor must draft a strong commercial lease, paying close attention to:

- **Market rent:** the rent charged must be independently verified as a fair market rent. Charging a discounted or below-market rent is legally seen as giving a benefit to the tenant/member, which is an unauthorised payment that triggers severe tax penalties.
- **Security of tenure:** The Landlord and Tenant Act 1954 gives commercial tenants a statutory right to renew their lease when it expires. For the SSAS Trustees (the Landlord), this can be limiting for future property sales. Therefore, they often instruct their solicitors to contract out of the 1954 Act.

To legally exclude the Act, the Landlord must serve a formal statutory notice on the Tenant, and the Tenant must then execute a statutory declaration (a sworn legal statement) confirming they understand and agree to give up their renewal rights. This legal procedure is non-negotiable to exclude the Act.

- **Covenants:** these are the legal promises and obligations. The lease will detail the tenant's repairing duties (a full repairing and insuring lease (FRI) is standard), what the property can be used for, and restrictions on assignment (selling the lease to a new tenant) or subletting.

This legally binding lease agreement is what secures the rental income, which is the core reason the investment is justified for the SSAS in the first place.

## 4. Declaration of Trust: the governing legal agreement.

The Declaration of Trust (DoT) is the foundational legal document, the constitution, that sets up the SSAS and defines the powers and duties of the Trustees. It is critical during the property acquisition for several reasons.

- **Validating powers:** the conveyancing solicitor needs to draft and review the DoT to confirm the Trustees legally have the specific power to acquire, own, and mortgage commercial property. If the DoT contains any restrictions, the entire transaction could be invalid.
- **Trustee decision-making:** the DoT spells out the process required for major decisions. For buying property, it will define whether decisions require unanimous agreement or a simple majority vote among the Trustees. All Trustees must legally execute (sign) the conveyancing documents in exact accordance with the DoT and the Scheme Rules.
- **Beneficiary management:** the DoT legally outlines the members (the beneficiaries) and their rights, ensuring that every action taken by the Trustees serves the collective membership equally.

**Navigating a SSAS commercial property purchase is complex and requires a coordinated team of specialists: financial advisors, SSAS administrators, and solicitors that are experts in pension and commercial property law. Following these five legal steps is the only way to guarantee your investment delivers the intended tax-advantaged return without triggering punitive regulatory consequences.**

## 5. Future changes: the process of refinance.

At some point in the future, the SSAS Trustees may decide to replace their existing loan or take out new borrowing; this is called refinance.

### Continued non-recourse

The single most important legal requirement for any refinance remains the non-recourse covenant. When dealing with a new lender, the SSAS solicitor must again ensure the new loan agreement and mortgage deed explicitly state that the loan is secured only against the specific property and that there is no recourse to the wider SSAS fund.

### Lender documentation

The new lender will conduct their own detailed legal due diligence, primarily focusing on the existing commercial lease (Section 3). They will almost certainly require:

- A legal charge: the new lender's solicitor will register a new legal charge at the Land Registry, which legally secures their interest in the property.
- Lease review and priority: if the commercial lease to the tenant was signed before the new mortgage, the lender will typically demand a Deed of Priority. This legal document ensures that, in the event the Trustees default on the loan, the lender's mortgage takes priority over the tenant's lease rights. This gives the lender comfort that they can secure vacant possession if necessary.

Refinancing is, in effect, a legal check-up on the property's legal title and the strength of the commercial lease, all while maintaining the strict non-recourse rules of the SSAS.

### Lee Gaddes

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