

SUPERANNUATION SPLITTING

Superannuation in both matrimonial and defacto property settlement matters is able to be divided or “split” between the parties, so as to achieve a just and equitable division of property.

A superannuation split normally takes place in matters where the value of one party’s superannuation is substantial when compared to the other party’s superannuation, and in comparison to the value of the other assets held. For example, it is not unusual for the equity in a home to be say \$300,000.00, and for one party to hold superannuation valued at \$600,000.00. In such a scenario, the superannuation is most likely to be split.

The difficulty with superannuation splitting is that often the party who is entitled to receive the split does not want it, as he/she would prefer to receive a cash payment instead of superannuation. This cannot happen in most cases, as this would result in one party receiving the majority of their entitlement in superannuation (which is not accessible until retirement age), and the other party receiving all the cash or liquid assets. Superannuation splitting laws were introduced so as to stop this type of settlement from happening, so that both parties in such a scenario walk away with a reasonable amount in cash or liquid assets.

As the party who is entitled to the superannuation split cannot access the superannuation until retirement age, he/she does not often see the benefit in receiving the split. It is advisable for both the party who is entitled to receive the superannuation split, and the party who is to lose some of their superannuation, to seek independent financial advice as to the advantages/disadvantages of a superannuation split. In some cases, the party who holds substantial superannuation, may choose to take a lower cash payment, which reduces the superannuation split to the other party, based on financial advice regarding the benefits of retaining superannuation in the long term.

Superannuation splitting becomes complicated when DFRDB and defined benefit superannuation accounts need to be split. In such circumstances, at Oner Family Law, we work together with superannuation experts (actuaries) to ensure that such funds are appropriately valued, and that our superannuation splitting Orders are appropriately drafted.

When agreement is reached as to the splitting of superannuation, Court Orders need to be drafted in a very specific/precise way for such Orders to be approved, by both the Trustee of the superannuation fund, and the Court.

This is a complicated area of the law, and you should ensure that you seek specialist family law advice regarding such issues.

For specialist family law advice and all your family law needs, call Katrina Oner from Oner Family Law on (07) 3463 0688.