
Self Managed Superannuation Funds

Members of self managed superannuation funds (SMSFs) must also be trustees of the fund or directors of a corporate trustee of the fund. If both parties of the marriage are members of an SMSF, an added layer of complexity arises as both parties must continue to be involved in the trusteeship of that fund until they are no longer members.

The assets in the SMSF may be split or sold so that cash can be paid to the other spouse. The sale of assets may have capital gains tax consequences.

Assessing contributions to superannuation as part of s 79 process

Over a period of time the "value" attributed to pre-cohabitation contributions to property (including superannuation) falls.

Disputes about the date of valuation of superannuation usually relate to the weight to be given to post-separation contributions. Assets are valued as at the date of trial or the time of settlement. Post-separation contributions may affect the percentage split rather than the value of assets. Often, if there are children of the marriage, contributions to the family after separation offset any contributions by the primary income earner to property, including superannuation after separation. However, if there has been a long period of separation, the superannuation contributions made after separation may be given greater weight than those made before separation.

Dealing with pension payments

Pensions in the payment phase pose particular challenges to the court.

Some pensions are referable to a capital sum which can easily be identified. Other pensions are not. The valuation process gives a capital value to a pension even if the member can never receive a lump sum.