



PLAIN ENGLISH GUIDE

SUPERANNUATION AND PROPERTY SETTLEMENTS

The issue of superannuation when it comes to a breakdown of a marriage is a very problematic and complex area. There are very strict rules in relation to superannuation that must be adhered to. New changes to the law relating to superannuation and property settlements came into effect in December 2002, and it is important that you are aware of these changes. Please note however, that the new laws only relate to couples that are or have been legally married, and as such are not applicable to de facto couples.

Prior to the changes superannuation was treated as a financial resource, not property. Now, superannuation is considered as part of the property pool of the parties. The court can make one of two orders in regards to superannuation; it can make a 'splitting' order, or a 'flagging' order, and both of these orders must be followed by all superannuation funds.

A Splitting order is one where the superannuation is split between the two parties in whatever percentage the court sees fit. A flagging order means that the superannuation fund is prohibited from paying any funds out to the member when they retire until the court decides how the money should be handled.

The changes were made to try and make the system fairer to both parties. Under the old system, if one party had a large superannuation entitlement, often the division of the assets was unfair on the other party. Orders regarding superannuation were also not binding on the superannuation funds, which meant that some orders were not complied with. This system also delayed finalising

superannuation for many years in some cases until the relevant party retired, which meant that the property issues were not finalised for a very long time and the proceedings were dragged out for much longer than necessary. It was important that changes were made to address these issues.

A member, or the spouse of a member can get information from superannuation funds about the member's interest. As long as all of the legal requirements of the request are met, the fund must provide this information when it is requested. The information enables the member's asset in the fund to be valued and it then helps the courts and the parties decide how they should best divide their property interests. The law provides for superannuation to be valued - there are many different types of superannuation interests and each has its own formula for valuation. The exception is self managed superannuation funds which have no set formula. Your superannuation fund should be able to provide you with information regarding valuation.

When the court makes orders concerning superannuation interests a copy of these orders must be sent to the relevant superannuation funds. What the orders say is different in every case and depends on many different factors including the type of superannuation interest. Once orders are made, we will be able to obtain information on how those orders will be carried out by the funds.

Commins Hendriks Family Law team is experienced with handling superannuation and property settlement issues, and would be happy to help you out with your particular situation.