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# PROPERTY SETTLEMENTS IN THE AGE OF CORONAVIRUS (COVID-19)

The Coronavirus (Covid-19) pandemic has had a significant impact on Australia's economy. In the family law world, the reduction of the balance and the values of superannuation, real estate and businesses has impacted all property settlements - whether still being negotiated or those that were formalised prior to the pandemic.

## SUPERANNUATION

The pandemic has been particularly harsh in reducing the values of people's superannuation balances. It is not uncommon to hear of those who were nearing retirement who are now reconsidering their options. Retirements have been extended by several years.

Superannuation splitting laws allows the parties to value their superannuation and to 'split' superannuation payments. Superannuation interests are commonly held in either an Accumulation Fund, Defined Benefit Fund or Self-Managed Super Fund. Depending on the type of fund, the approach to valuing such funds is different. For example, whilst the value of a member's interest in an Accumulation Fund is the balance on a member's statement, the value of a Defined Benefit interest is generally calculated by reference to the member's salary, years of service and includes a specific formula. In contrast, the value of a Self-Managed Super Fund is generally the total value of real estate, cash and shares.

The drop in the share market in response to COVID-19 has led those who have an Accumulation Fund with a portion of their superannuation in shares, to see a significant decrease in the value of their superannuation. In comparison, those with a Defined Benefit Fund may be more protected during this time due to the use of a specific formula. For Self-Managed Super Funds, the drop

in real estate prices, share prices and interest rates results in a decreased value.

In the current environment, the uncertainty of the share market means that it may preferable for a split to be expressed in percentage terms, in order to spread the risk more evenly amongst the parties, rather than super splitting orders being expressed in dollar terms.

## EARLY ACCESS TO SUPERANNUATION

Pursuant to the Federal Government's Economic Support Packages, a client may be eligible to access up to \$10,000 of their superannuation before 1 July 2020. A further \$10,000 will be available from 1 July 2020 until 24 September 2020. Tax is not payable on these sums and the withdrawal does not affect Centrelink or Veteran's Affairs Payments.

However, clients should be mindful about whether to access those funds whilst negotiating a financial settlement and should seek advice from an independent financial planner. It is uncertain, at this stage, how the Courts will treat the early release of superannuation as part of the property settlement. If the money has been used to meet living expenses and other reasonable costs, it is arguable that the withdrawal will not be included in the parties' asset pool.

## PROPERTY SETTLEMENTS

The state of the property market is very unclear and whilst economists have been predicting a drop of 20 per cent in some areas, it is very much unknown what the overall impact of COVID-19 will be on property prices.

COVID-19 has significantly affected Australian businesses and parties should consider whether updated business valuations are required. Valuation methods that have been common in the past, such as further maintainable earnings, are now giving way to a discounted cash flow approach. Valuations have become more complex and more costly for parties and the scope for disagreements between experts has increased.

For those negotiating a financial settlement, serious consideration should be given as to whether a settlement should be delayed until such time as there is more certainty. This could avoid the parties accepting a potentially disadvantageous settlement and/or later attempting to have the Financial Agreement or Consent Orders set aside. However, it is likely the time for recovery will be lengthy and a delay may not be feasible in some situations.

For those parties whose property settlements were formalised, but are yet to be implemented by the parties, it is unclear how the Courts will approach the impact COVID-19 to agreed settlements and whether or not those settlements will be able to be set aside.

During the Global Financial Crisis (GFC), the Courts appreciated the uncertain nature of the global crisis and were willing to accommodate accordingly. For example, where the Courts were concerned about the decreasing value of assets of the parties' as a result of the GFC, final orders were not made, the Court provided the parties an opportunity to re-open their case in the future to make further submissions about the value of assets and liabilities and superannuation if necessary. \*

Another example is where the Husband's superannuation fund had lost substantial value as consequence of the GFC. The Family Court re-listed the matter for four months' time to hear further submissions in relation to the parties' superannuation. In these very uncertain times, it is important to seek legal, expert and independent financial advice in relation to superannuation splitting orders, potential valuations regarding businesses and properties and to discuss the overall impact of COVID-19 on a family law matter, whether the matter has yet to begin, is ongoing, or an agreed settlement has not yet been implemented. \*\*

#### WANT TO KNOW MORE?



If you would like further assistance with your property settlement, please phone us on (07) 5458 9000 for a free chat with one of our solicitors.

\**Cabbell v Cabbell [2008] FMCAFAM 1103*

\*\**Sadler v Sadler [2009] FamCA 447*



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