Why you should check with a separation lawyer about enforcing a property order against you ex's superannuation

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You may settle your property arrangement with your former partner by agreement, with assistance of a separation lawyer or by judgment of the Court. This may include for property to be transferred to one of you, or for a cash payment made in exchange for an interest in property.

But what happens if you have these orders, but for one reason or another, your former partner has not completed their end of the bargain? What if your former partner is to pay you a certain sum of money by a certain time, but the time comes and goes, with no payment from them? What if, after seeking legal advice and looking to enforce the orders, you find they have no means of payment? If they have no substantial assets, can you make an application to the Court and seek the monies they have agreed to give you are taken from their superannuation?

At its simplest, superannuation in Australia is a heavily guarded form of savings. It is intended to be something that you rely upon in your golden years of retirement. As such, a component of superannuation legislation is built around protecting it from creditors that would otherwise seek to recoup their losses and leave the debtor penniless in their old age.

Depending on what form of superannuation your former partner has, it may be possible to enforce a Court order against it although only in some limited circumstances. Your right to recover depends entirely on the type of Order you have, what your former partner's exact financial circumstances are, the manner in which their superannuation is structured, and the costs you are willing to incur in seeking the original sum owed to you. While seemingly available to your former partner upon turning a certain age, their superannuation is otherwise inaccessible. When seeking enforcement of an Order against superannuation, exhaustive reading of the law and a detailed discussion of your specific circumstances is needed to best determine your entitlements.

Superannuation is a complex area of the law that is strictly regulated. It is best to ensure that any property orders you agree to or that are determined by the Court are enforceable. To ensure this, you can get advice about your property concerns from a separation lawyer from our firm specialising in the area of property law.

Speak to one of them today!

Contact us on 1800 300 170 or email us at familylaw@matthewsfolbigg.com.au

Disclaimer

Family law situations can be complex and sometimes they can involve serious issues. Information outlined is proposed to provide general guidance only. Due to the seriousness of legal matters as well as the uniqueness of your individual situation, professional advice should be sought. For advice, please contact one of our Family Lawyers.