SUMMER 2022

WEALTH & SUPER MATTERS

Superannuation strategies and your personal guide to wealth creation

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Can I Buy A Car In My SMSF?

There has been good money made for some people from selling classic cars over the past few years. Even new cars can be worth more than what was originally paid for as soon as it is taken off of the lot.

This is a rare occurrence, however, and to make money out of a car, you need to know what you are doing.

But what if you are an expert and see the perfect buy that requires $100,000 (and your only access to that money is through your superannuation), can you make this purchase with your SMSF?

There is no sense in thinking that your super fund will simply be able to go and buy a classic car for your enjoyment. It will not be stood for, and you will likely lose money and the car.

Purchasing a classic car can be done, but only if a very strict set of rules are complied with.

This strict set of rules applies not only to cars but also to what the law calls "collectibles". These collectibles extend to stamps, artwork, wine, coins, memorabilia and others.

The rules require that the collectibles are insured in the name of your fund, that they are kept away from your place of residence and that you are not allowed to use them at all (a classic car can't be driven to the mechanic, for example). Repurchasing these collectibles from your fund will require a formal written valuation.

While investing in a collectible is allowable in an SMSF, it should **only** be used for proper investment purposes. It should not be thought of as a way to buy something 'cool' with your superannuation money.

After carefully considering your options regarding these collectibles, the costs and whether or not it is a proper investment, it can be done. It's advisable to speak with us first to ensure you are prepared and in compliance with the rules. Start that conversation today.

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What Happens To A Loan From The Bank Of Mum & Dad In The Event Of A Child's Divorce

Over the last few years, the 'Bank of Mum and Dad' has become one of the largest lenders in Australia. One of the most common ways this happens is through guarantor loans for purchasing a property.

In 2021, 60% of first-home buyers turned to their parents for financial assistance to make their property dreams a reality. Whether this was through their savings or their equity on their existing property, in total, the Bank Of Mum and Dad loans account for $34 billion put towards first-time homes across the country.

As parents financially help their children with home deposits, with their contributions averaging more than $89,000, parents need to ensure they are not putting themselves at additional financial risk.

Protecting The Loan In Case Of Divorce

There has been increased concern from parents wanting to safeguard and protect monies provided to children during this time due to the rising interest rates, increased mortgages and higher risks of defaulting on a loan. This is especially true if loaning to a child and their partner; in the event of the relationship's potential breakdown, how is the loan safeguarded and protected?

One of the safest ways to protect any money provided between family members is via a written financial agreement.

Financial agreements enable parties to regulate their financial relationship in the event of separation, giving them more control over financial decisions.

These agreements can be made before a relationship commences, during or at the end of it.

Parents often require their children to enter into a financial agreement with their spouse as a condition before the provision (whether as a loan or gifted) of monies for a property purchase.

Another way is to provide clear documentation of the money provided between the parties involved (the parent/parents to their child and their child's partner). This can be done through a written loan agreement, which a solicitor should preferably draft.

A loan agreement should contain the following terms and conditions (at minimum):

- The amount of money loaned;
- The purpose or intention of how the loaned monies will be used;
- Interest rate;
- Term of the loan (the duration);
- Repayment schedule; and
- Security for the loan.

It might be awkward asking for a "loan agreement" from your child and their partner, but in case of any future relationship breakdown, it will save a lot of heartaches.

What Happens To The Loan In The Event Of A Divorce?

If the child divorces their partner, the settlement must consider your "Bank Of Mum and Dad" loan to the pair.

In very simple terms, the first step is to work out the total value of the property, and second to determine the percentage that it should be divided by, considering each spouse's contributions.

The treatment of financial support may depend on the context of the support, whether it was considered a loan or gift, and whether it was intended to benefit both parties or just one person.

If the funds were given as a gift, it would be treated as a contribution by the person who was given the gift and will be taken into account when determining the percentage of the assets to be split.

Courts will look for some formality in a loan agreement, including documentation, whether there was a repayment plan in place, if there had been any demands for repayment and if any interest had been charged.

Most family loans are informal and don't have this level of detail available, making claiming the funds were "a loan" much more difficult. Even though lending money to family or giving it as a gift is a common practice, it's vital to ensure the circumstances are well documented.

This area is fraught with potential complications - it is best to seek the advice of licensed professionals and advisers (such as mortgage brokers, financial planners & legal advisers) before assisting your children with a Bank Of Mum and Dad loan.

NDIS Housing & Superannuation

Participants involved with the NDIS are assisted to live independently and plan out their ongoing future, including their home and living goals. The NDIS can provide support to accessing housing for these individuals, but availability is often limited due to high demand.

Using your Self Managed Super Fund to invest in an NDIS property is a mid-to-long-term investment that could supplement your super to fund the retirement you want and deserve.

Having a self-managed superannuation fund gives you the ability to leverage your super by borrowing money from a lender to be able to make more sizable investment purchases, such as NDIS Property.

The rules and regulations around using your SMSF to purchase NDIS property can be quite complicated.

An SMSF can borrow money to purchase a house and land package as long as it is purchased together in one transaction (a one-part contract) as a single acquirable asset where the asset is identified up front as vacant land with a completed house on it.

There are specific considerations to consider to determine whether or not the investment property can be purchased through your SMSF.

Location & Demand

The property must be in an area with high rental demand (typically considered as anywhere within a 50-kilometre radius of an Australian capital city or a 35-kilometre radius of a major city).The areas generally fall into these areas and have a vacancy rate of 1% or below (meaning that the rental demand for investors is there).

Bank Approval

The property purchased through your SMSF must be ideally as new as possible as it needs to be approved by the bank. This is because the property must be positively geared (income from the rent should be higher than the outgoings on the property). At the very least it should have a neutral cash flow (meaning the incomings and outgoings are relatively even).

No Personal Gain From The Property

The last criterion is that you can't see any personal gain from your investment property. This includes:

- Living in the investment property or installing tenants known to you.
- Completing any repair or maintenance work (can only be done by licensed third-party tradespeople).
- Organising the property's rent (must be done by a licenced third-party property management team)
- Developing or improving the property - the property can only be maintained to its current standards. No renovations can be undertaken.

Some risks can accompany using your SMSF (Self-Managed Super Fund) to invest in NDIS property – the number one is cash flow. Your loan repayments will come from your SMSF. Sufficient income into your SMSF (including NDIS Rent from the tenant/s) needs to be ensured to make the repayments.

Some ongoing costs can come with using your SMSF to purchase a property. These may include:

- Property management fees
- Accounting and auditing costs
- Building insurance, council, and water rates of your investment property
- Body Corp, if relevant
- Business registration of your SMSF with ASIC.

In short, using funds from your SMSF to purchase an NDIS investment property is not the same as a regular SMSF property investment loan. Doing so should consider guidance from professional advisers and careful planning.

When you retire, there will be two options available to you with the property.

1. Continue to receive rent on your investment property as your pension-based income, or
2. Sell the investment property and, once you've paid any potential remaining debt on the property, use those funds as your retirement income. You need to reach the preservation criteria to sell the property and not pay capital gains tax.

Could Winning The Lottery Affect Your Pension?

Navigating the Age Pension may be one of the most stressful situations you face after retirement due to the many conditions, eligibility requirements and tests that can impact the amount you receive. What happens if you add winning the lottery as a pensioner into the mix?

While the odds of winning the jackpot in the lottery are astronomical (1 in 45,379,620 to be precise), the odds of winning any other prize are greatly reduced in comparison (1 in 55). But if you were to win a major prize while on a pension, how you redeem it could impact it.

There are two different types of winnings you can receive from a lottery win. These are lump sum amounts or a set-for-life arrangement where you get a regular monthly payment for an extended period (say 20 years).

It's good to separate the two because the impact on your pension eligibility is different depending on the type of winnings.

Winnings As A Lump Sum Amount

For Services Australia (Centrelink) purposes, if you receive a lump sum through winnings or gambling, it is not treated as income. However, it may still affect your rate of pension, depending on what you do with it.

If your total winnings as a lump sum mean that your bank account balance exceeds $1,000,000 and what your currently held assets include, you would most likely be pushed over the asset limit, and the pension would cease.

If you only won a smaller amount (say, $10,000), the increase to your overall assets would be smaller, and your pension rate may not be affected at all.

Set For-Life Amount Over Time

The periodic payments of a set-for-life winning by a pensioner are treated by Services Australia (Centrelink) as income. It is assessed each time it is paid for the duration of the winnings.

For example, if you were the only winner of the Division 1 prize for the Set For Life Lottery in Australia, you would receive $20,000 per month for ten years (while Division 2 winners receive $5,000 per month for one year). These monthly payouts are tax-free but could wreak havoc on your Age Pension.

This is because the monthly payouts are assessed as monthly income for the time they are received. For the **$20,000** per month for **20 years**, this would effectively eradicate your pension.

For the winner receiving $5,000 per month, however, this amount can significantly reduce the amount you or your partner may receive due to the pension income test. The pension income test uses the gross income of both partners, even if one of the partners does not receive a pension.

Work Bonus Increased Balance Extended For Age Pension Recipients

The Age Pension Work Bonus is a current government incentive that allows older Australians (pensioners) to return to the workforce for part-time work, without losing part of their pension.

One of the main resistances encountered throughout this is the notion that doing so will cause many pensioners to lose part of their pension.

From 1st December 2022, pensioners will be able to accrue more in their Work Bonus Balance to offset their future income tests (until 31 December 2022). The work bonus balance for pensioners has been increased by $4000 (from $7,800 to $11,800 for couples). Your work bonus balance will reset to $7,800 on 1 January 2024.

The measure will affect people over age pension age receiving the following payments:

- Age Pension.
- Disability Support Pension.
- Carer Payment.
- Veterans Entitlement Act Pension and Income Support Supplement.

Most importantly, this increase will be implemented automatically, with no need for additional effort on your part.

The Work Bonus has been a driving force for allowing skilled workers to return to industries suffering worker shortages without fear of losing or reducing their current income.

Under the bonus, those receiving the Age Pension can earn an additional $300 each fortnight without being counted towards their income tests.

This means you can still receive the full-age pension, with an additional earning of $150 per week in wages. This amount does not count towards the income test, and you would most likely still be below the tax-free threshold.

Income eligible for the Work Bonus includes

1 Employment income from paid work

Undertaken by the person as an employee in an employer/employee relationship.

This includes but is not limited to salary, wages, leave payments, commissions, employment-related fringe benefits, bonus payments, supported wages and casual loadings.

2 Gainful work income earned through self-employment

So long as the work involves personal exertion on the part of the person concerned.

Examples include operating a business as a plumber, farmer, wedding celebrant or artist.

If you are a pensioner who may be undertaking work during retirement or are approaching retirement and want to know more about your options, start a conversation with a professional adviser as soon as possible.

Can Compensation Payments Affect Contributions To Your Super?

Compensation is usually paid out as a result of a work-related injury or illness, injuries received in a car accident or injuries received because of the negligence or fault of another person.

If a super contribution arises from a personal injury payment or a structured settlement (from a compensation payout), you may be able to exclude all or part of it from your non-concessional contributions cap. This also means that no extra tax will apply to this contribution.

It is only the part of the compensation that relates to personal injury that can be contributed to super. Therefore, the court order or the agreement between parties must clearly state the payment breakdown.

Compensation payments usually impact any Centrelink entitlements the member may be receiving. Any super balance unrelated to the compensation payment will also affect the member's total super balance and transfer balance cap.

Generally, super contributions are of two types – concessional and non-concessional.

There are annual caps (limits) on the amount of concessional and non-concessional contributions you can make. If you exceed these limits, you'll be liable to pay extra tax.

The concessional contributions cap is currently
$27,500 per year
(unless you are eligible to use the carry-forward rule)

The non-concessional cap is
$110,000 per year
(unless you are eligible to use the bring-forward rule)

Three types of payments are eligible:

1. **Settlements of a claim for compensation or damages for personal injury suffered by the person and the claim is made by the person or their legal representative.** The settlement must be by written agreement between the parties (whether or not a court order is required to make the agreement effective).
2. **Settlement of a claim for personal injury suffered by you under State or Commonwealth law concerning workers' compensation.**
3. The payment **arises from a court order following a claim for compensation or damages due to personal injury** based on the commission of a wrong or right created by statute.

Once the payment satisfies the above criteria, the following three conditions must be met to make the super contribution:

1. Two legally qualified medical practitioners certify that, because of the personal injury, it is unlikely the member can ever be "gainfully employed in a capacity for which they are reasonably qualified because of education, experience and training"
2. The member (or their legal personal representative) notifies the super fund by completing a Contribution for personal injury form NAT 71162 when (or before) contributing.
3. Contributing within the required time limit, usually within 90 days of whichever is the latter: receipt of payment, date of the court order or agreement made by the parties.

If you are unsure how your compensation payment may affect your contribution caps, consult with your provider or a licensed professional as soon as possible.