



TriSuper Auditors

Divorce & SMSFs

29 February 2024

With **Joel Curry**, Director, TriSuper Auditors





Let's get warmed up

- Current SMSF issues
- Marriage & Divorce: the Statistics
- Example Case Study
- The Basics
- Common issues & problems
- Options
- Q & A

CURRENT SMSF ISSUES

- ❑ **CONCESSIONAL CONTRIBUTIONS** – who can make them? What if you go over? Catch-Up Concessional Contributions, and Age 75+ **New CC Thresholds**
- ❑ **NON-CONCESSIONAL CONTRIBUTIONS** – who can make them? How much? Bring forward arrangements. What is *not* a NCC?
- ❑ **Better Targeted (ie new tax) Super Concessions**
- ❑ **Calculation of Earnings**
- ❑ **All Things Pension**

These topics and more were covered in my breakfast briefings in Oct/Nov 2023. To view the slides, visit the Training page of our website.

Of course, you are welcome to contact me at any time to ask me any gnarly (NALI?) questions – whether or not you are a client.



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DIVORCE & SMSFs



Why are we talking about SMSFs and divorce?

- Statistically over 35% of marriages end this way
- And additionally spousal relationship breakdowns
- This is your client base.
- Is there much you should or can be doing to plan for this?



Marriages & Divorces, Australia 2022

Marriages and Divorces, Australia, 2022		2020	2021	2022
All divorces				
Total divorces granted	no.	49,510	56,244	49,241
Total marriages registered	no.	78,987	89,167	127,161
Median duration of marriage				
To separation	years	8.4	8.4	8.9
To divorce	years	12.1	12.2	12.8
Median age				
At marriage	years	29.4	29.6	29.8
At separation	years	41.7	41.9	42.6
At divorce	years	45.6	45.9	46.7

Source: <https://www.abs.gov.au/statistics/people/people-and-communities/marriages-and-divorces-australia/latest-release>

Tom & Nicole

- Tom (35) wants to set up a SMSF to buy a commercial office in which he will operate his surveying business.
- The office is for sale at \$1.5M.
- Tom only has \$300K in super and has little assets outside of super.
- He may be able to borrow in his SMSF to buy the property if he had another \$200K.
- Tom's wife Nicole (37) fortunately has \$200K in super. How convenient (for this example...)

- So, Tom and Nicole setup a SMSF, roll in their collective \$500K, and enter into a LRBA to purchase the property.
- Nicole just went along with Tom's plan and has no real interest in SMSFs or what it means to be a member or trustee.

Does this sound a familiar situation?

- The business enters into a commercial lease with the SMSF, and for the next two years, everything runs smoothly.
- The Rent and LRBA loan payments are made as required.

Tom comes to see you with some bad news.

- His marriage has broken down and he is working through a property settlement with Nicole.
- Nicole is seeking a 65% split given their two primary school age children will be living with her.
- They do have a residential property with a large mortgage, but the main asset is the SMSF.

You realise that Tom has a problem if he wants to maintain ownership of the commercial office within the SMSF.

What can you tell Tom?

What could have been discussed prior to setting up the SMSF to assist now?

STOP!

Check if the advice you are giving needs you to be a licensed financial advisor.

Luckily for me, I have the power to temporarily give you this power for the next 50 minutes...

But let's first step back for a while.



The Basics

- Yes, super interests (SMSFs included) form part of marital/spousal assets
- Condition of release requirements still apply
- Superannuation Agreement / Family court order

The Basics – continued

- Super can be split using various methods
 - Nominate a base amount
 - Specifying a %

- You can agree to not touch super; ie adjust allocation of non-super assets.





So, what SMSF issues and problems do we commonly see occur?

One party not really aware of the SMSF

- More common than imagined
- Unaware of investments
- Not aware of obligations



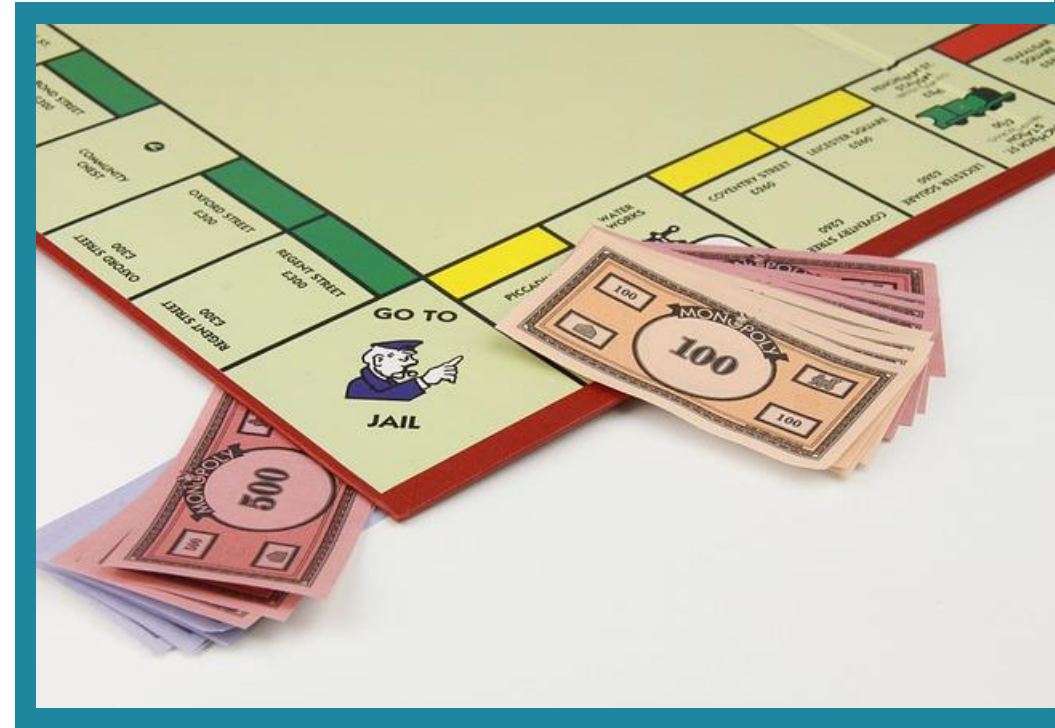
Valuations

- Normal valuation issues
- Illiquid assets
- Shares in associated business operations



Running off with the money

- Many cases of one partner emptying the bank
- Illegal early access
- What can be done?



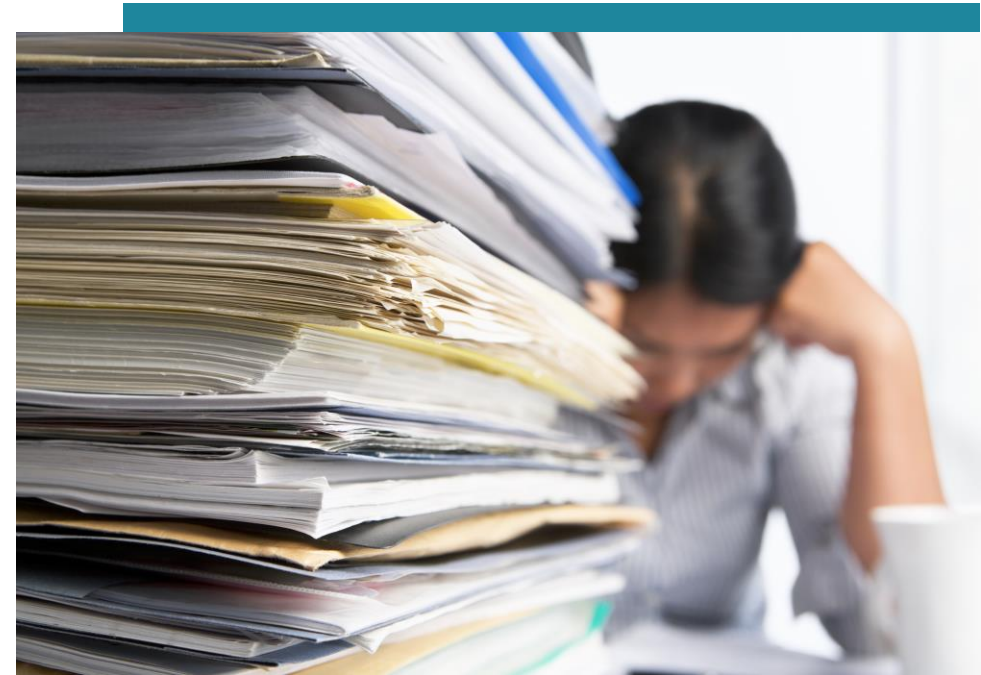
Illiquid Assets

- How do you best split?
- Does one party bear the burden?
- Quick sale at best offer?
- Member purchase assets from Fund ?



Paperwork, paperwork...

- Change of Trustees
- Resignations
- Change of asset ownership
- Dealing with banks and share registries
- Nightmare...



Life insurance

- Policies being paid by SMSF for existing/exiting member
- Can the policy be transferred?
- How will it be funded?

Binding death nominations

- Former spouse a tax dependant but not a SIS dependant
- What does this mean?
- Does BDN become invalid on separation?
- Check trust deed

What about Tom and Nicole?

- Nicole is asking for a 65% split of the SMSF
- The property may need to be sold
- What does this mean for Tom's business ?
- Help!



What about Tom and Nicole?

- The net assets of their SMSF is currently \$500K
- 65% = \$325,000
- How do we get this to Nicole?

What about Tom and Nicole?

- We assume Nicole doesn't meet a release condition
- \$325,000 must stay in super environment



What about Tom and Nicole?

- No liquidity in SMSF
- Building may need to be sold
- Tom's business continues to lease from new owner ?



What about Tom and Nicole?

- Can the Fund increase borrowing?
- Not allowed under LRBA rules



What about Tom and Nicole?

Three Options

- Sell building, rollout Nicole's entitlement
- Nicole and Tom retain SMSF
- Alternatives?



What about Tom and Nicole?

Retain SMSF?

- Yes, they can post-separation
- Albeit Nicole would now have the larger balance
- Do they want to maintain ties?

What about Tom and Nicole?

Alternatives

- Bring in new members
 - Parents / siblings / business partners of Tom
- Sell building to non – SMSF entity

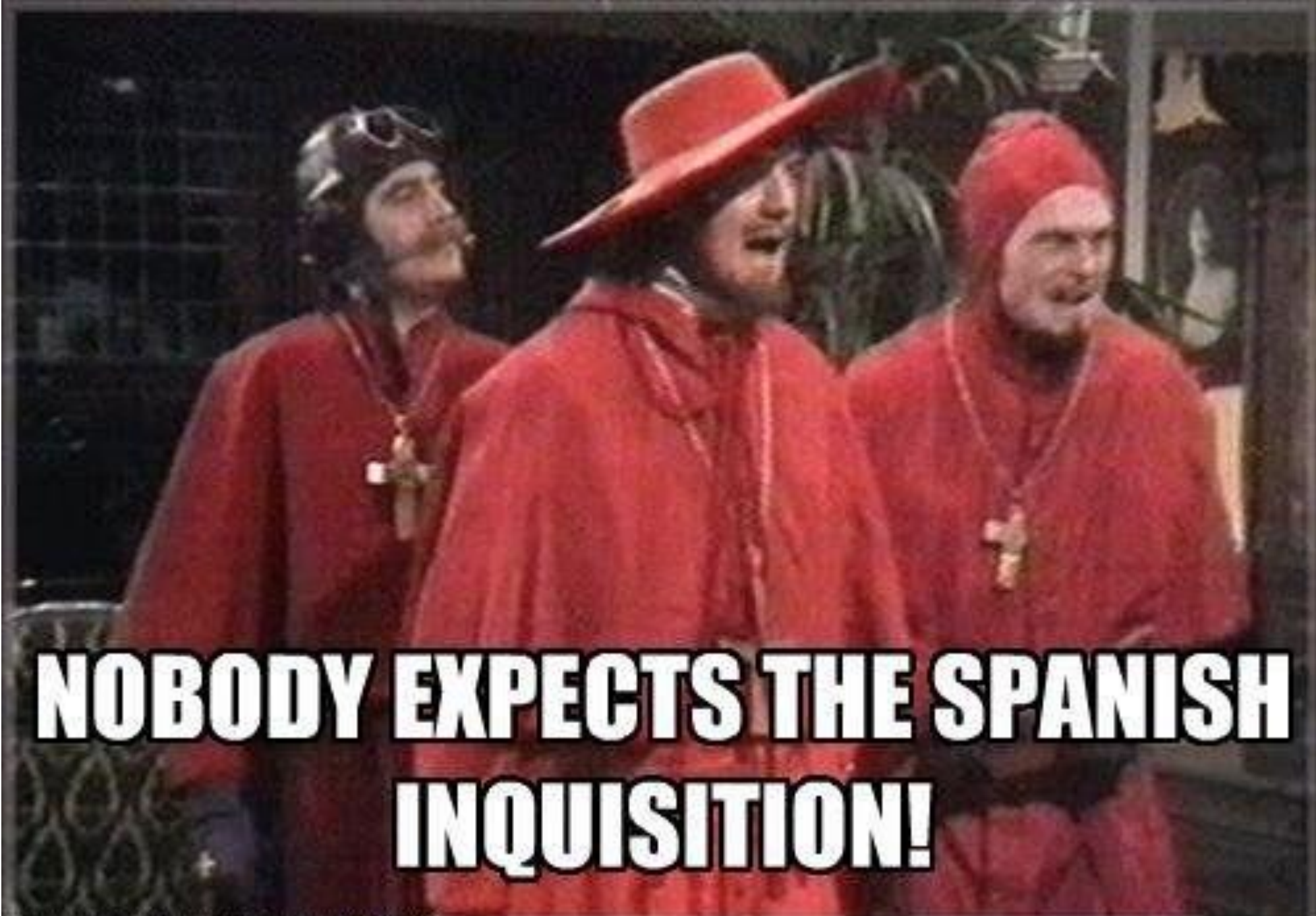


Would it be easier to have this discussion at setup time?

We likely don't

Cause





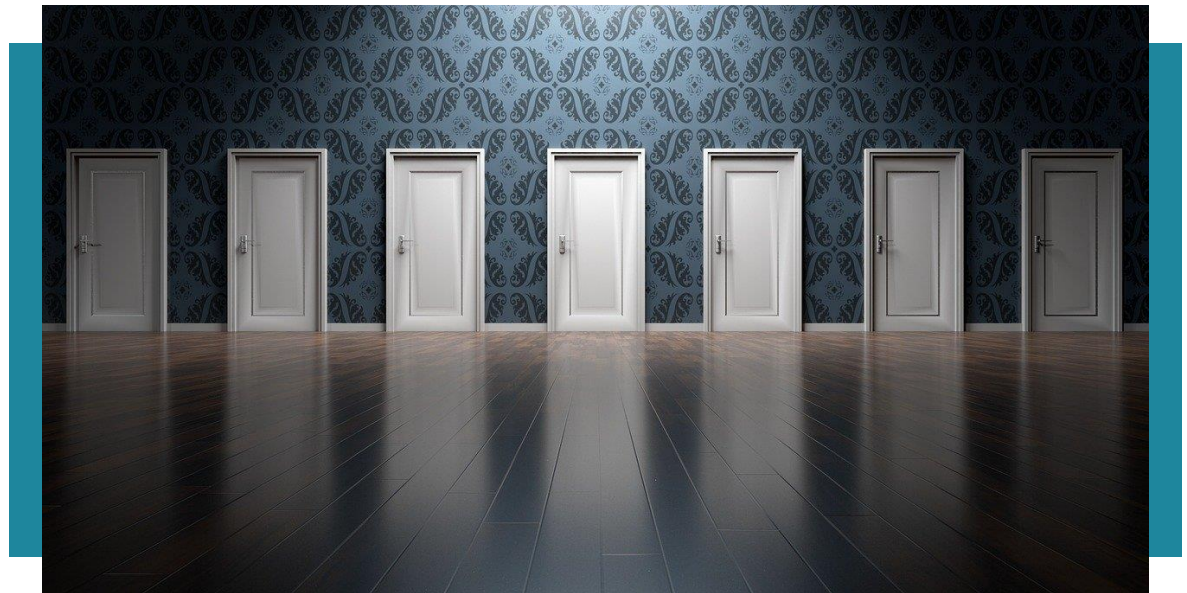
**NOBODY EXPECTS THE SPANISH
INQUISITION!**

Just the stats...

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- Is it appropriate to have the chat?
 - With stats like this..
- What options should be discussed?





Separate SMSFs?

- Practical?
- Extra costs

Go away and think about this...

- Each member get separate legal advice on setup?
- Mandated Education. Maybe in the future.
- SMSF pre-nup



Should life insurance be held in a SMSF?

- Hold in non SMSF super and fund via rollover ?



Segregated assets ?

- His / Hers / Theirs
- Does it really help?
- Assets still become joint for family law



Illiquid assets

- Non – SMSF ownership options



Discuss & Document

- Clients / Trustees aware of issues that may arise on separation
- Non-traditional assets – harder to unwind
- Just the stats



**Can't we all just
get along?**



TriSuper Auditors



We made it

Q&A

“I’ll take that as a comment...”



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ABOUT JOEL CURRY

Joel began auditing SMSFs in 2002. Since then, he has personally audited more than 15,000 individual SMSFs. This has given him an extraordinary breadth of experience and depth of expertise – and he is often called upon as a sounding board and adviser to other SMSF auditors.

Joel is

- ✓ Ranked within the top 2% of all auditors nationwide as recognised by the ATO.
- ✓ One of only 10 of the Top 100 auditors given a clean bill of health by the ATO*. The others are either undergoing re-education or have left the industry.
- ✓ NSW SMSF Auditor of the Year
- ✓ Sought after media commentator winning the prized Editor's Choice award from SMSF Adviser.

He also has ATO & Tribunal experience in successfully defending trustees and has privileged "no-name access" to the ATO Professional to Professional service.

TriSuper Auditors

We are an Australian-based SMSF auditor focussed on serving small accounting firms around the country.

Trained accountants ourselves, we understand your world and fit in with your business process and practices. To create a simple, easy process.

That is all we do. Audit self-managed super funds, well.

If you have any SMSF queries, whether or not we audit your client's files, please do get in touch.

Contact

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Feedback

Scan the QR code to reach our feedback form.
What future topics would you be interested in?
Thank you.



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