Contributions and contributions caps

To make a downsizer contribution:

- the client must be aged 65 or older,
- the contributor must qualify for a full or partial CGT main residence exemption on the sale of the property,
- the 10-year ownership rule must be met,
- the contribution must be equal to all, or part, of the capital proceeds from the sale of an interest in a dwelling held by the client or their spouse; and
- the contribution cannot exceed the downsizer contribution cap.

Note

Assets owned before 20 September 1985 may be exempt from CGT without needing to meet the requirements of the main residence exemption. A downsizer contribution may still be made if the owner would have qualified for a full or partial main residence exemption but for the pre-20 September 1985 acquisition date.

Warning

The amended regulations that allow super funds to accept downsizer contributions for those aged 65 or older without the requirement to meet a work test were registered on March 7, 2018.

The spouse's property

A downsizer contribution can still be made where the disposed-of dwelling was owned by the client's spouse, but not by the client. If this is the case, the client must have been able to qualify for a full or partial CGT main residence exemption on the property had they owned part of the property.

The key consideration in this case is whether their spouse's home would be considered to be the main residence of the client. Tax Determination 51 outlines some factors that influence whether a dwelling is considered the main residence of an individual. These factors are:

- the length of time the client has lived in the dwelling,
- where the client's family reside,
- where the client keeps their personal belongings,
- where the client's mail is delivered,
- the client's registered address on the Electoral Roll,
- the connection of utilities, and
- the client's intention to occupy the dwelling.

Example

Alice is the sole owner of her home, 10 Cheshire Ave, which she bought in 2001. Alice is a divorced and met her current de facto partner, Pat, in 2012. Pat moved into 10 Cheshire Ave with Alice in 2013. Pat does not own any other property, keeps his belongings as Cheshire Ave, has changed his address on the Electoral Roll to Cheshire Ave and has had his mail redirected to Cheshire Ave.

Alice sells 10 Cheshire Ave in December 2019 when both she and Pat are 67. Alice can make a downsizer contribution using the proceeds of the sale. Pat may also make a downsizer contribution with the proceeds as it is considered his main residence as well.

The 10-year ownership rule

At all times in the 10 years immediately before the disposal of the dwelling, the client, their spouse or ex-spouse must have held an interest in the dwelling or the land on which the dwelling was located.

Note

If the spouse’s estate disposed of their interest in a dwelling, it is treated as though the spouse owned it up until the disposal. This applies where the client was the deceased’s spouse at the time the spouse died.

Where a previous dwelling was compulsorily acquired or destroyed and a replacement dwelling purchased under the exemption in section 118-147 of ITAA1997 is disposed of, the total ownership of both the original and replacement dwellings count towards the 10-year ownership rule.

Downsizer cap and limit

Downsizer contributions for an individual cannot exceed $300,000. That said, each member of a couple, if eligible, can make downsizer contributions from the proceeds of the same property up to the $300,000 limit. This may allow up to $600,000 in downsizer contributions to be made by a couple when their home is sold.

Example

Berwick (67) and Helena (70) are retirees who decide to downsize. They sell their family home, originally purchased in 1997, for $1.4 million and purchase a unit nearer the city for $900,000. After costs, Berwick and Helena have $450,000 to invest.

Helena contributes $300,000 to her super, and Berwick $150,000 to his, as downsizer contributions.

As well as the cap, the downsizer contribution for a client in relation to a dwelling is limited to the sum received by both the client and their spouse from the sale. This limit is reduced by any previous downsizer contributions made in relation to that dwelling by either the client or their spouse. The spouse’s proceeds are only considered under this rule where the spouse’s interest in the property was sold under the same contract as the client’s.

In practice	Multiple downsizer contributions can be made in relation to the sale of a single dwelling however they cannot cumulatively exceed the proceeds received for the sale.

When a downsizer contribution cannot be made

No downsizer contribution can be made in relation to the disposal of a caravan, houseboat or other mobile home.

Furthermore, no downsizer contribution can be made where the client has made a previous downsizer contribution in relation to a different dwelling. Similarly, no downsizer contribution can be made when a downsizer contribution has been made in relation to a different ownership interest in the current dwelling, other than a related spouse interest. A related spouse interest must be disposed under the same contract as the client's interest.

In practice

If the client or their spouse has sold a portion of their interest in their home previously and the client made a downsizer contribution in relation to that sale, they cannot make another downsizer contribution when they, or their spouse, sell the remainder of their ownership in the property under a different contract.

If, however, the client and their spouse sell their interests in the property under the same contract, the client can make a downsizer contribution from their share of the proceeds and another from their spouse's proceeds. The sum of the client's contributions is still limited to the $300,000 cap.