

Divorce and super

Superannuation splitting laws allow superannuation to be included in matrimonial assets and divided when a relationship breaks down. The laws apply to married couples in all Australian states and territories, as well as de-facto relationships in all states and territories except Western Australia.

Certain superannuation accounts cannot be split under the splitting rules. These include accounts with a balance of less than \$5,000 or a non-commutable pension or annuity of less than \$2,000 per annum.

Following is a general outline of the steps that are required to split superannuation.

Obtain valuation information

The first step in splitting superannuation is to value the benefit. An eligible spouse can apply to the superannuation fund trustee for information about a member's superannuation interest.

If you are applying for information you need to provide:

- Form 6 Declaration, which satisfies the trustee that you are entitled to get the information for the purpose of divorce splitting, and
- Superannuation Information Request Form.

The superannuation fund may charge a fee for providing the information.

Decide the method of splitting

A decision on which assets are to be split can be effected using a binding financial agreement or by court order (a court order can be obtained with consent of both parties or by court hearing).

- Binding financial agreement – this is a formal written agreement to split superannuation and/or other assets which requires both parties to seek independent legal advice.
- Consent of both parties – if both parties have reached an agreement at the outset, then an Application for Consent Orders can be filed in the Family Court, accompanied by a consent order recording the agreement. The orders can then be made in chambers without either person attending court.
- Court hearing – if an agreement cannot be reached, a court order can be sought.

Instruct the superannuation fund

The settlement may take some time to resolve. Therefore it may be prudent for a member of a separating couple to serve a copy of a flagging order on the superannuation fund trustee as soon as possible after separation. This prevents withdrawals being made before an agreement is reached.

Once the agreement is reached, a copy should be provided to the superannuation fund trustee as soon as possible to lift the flagging order and arrange any split. Evidence of the divorce or separation (Decree Absolution or separation declaration) may need to be provided to the fund.

Splitting the superannuation

Once a superannuation fund trustee has received all of the required documentation, the account balance/benefit will be split as required under the terms of the superannuation agreement or court order. The split can be nominated as a dollar or percentage amount and can apply to both accumulation and pension phases.

Depending on the type of superannuation interest and rules of the fund, it may be possible for a member's account to be split immediately upon receipt of the agreement or order or the split may need to be deferred until a future point in time (such as when the member retires and becomes entitled to benefits). If the split is to be deferred a flagging agreement is placed on the account.

To split an accumulation account the required amount is withdrawn from the member's account and is either rolled over to a new/existing account for the receiving spouse. This can be in the same fund or a different fund. The tax-free and taxable components of the member's account balance are calculated immediately before the split and this proportion applies to the receiving spouse's benefit.

To split a pension account, the income stream would usually be commuted (in full or part) to pay the benefit to the receiving spouse. If the pension cannot be commuted because of the super fund's governing rules, the pension payments can be split. This would result in two regular payments being made from the same income stream, one payment to the member spouse and a separate payment to the non-member spouse.

Consequences

- A superannuation fund trustee is allowed to charge a reasonable fee to cover the administrative cost of splitting or flagging an interest.
- If you agree to receive a superannuation split of preserved funds from your ex-spouse the benefit will be preserved in your account until you meet a condition of release.
- The split of superannuation is taken into account with the total financial settlement. Receiving superannuation funds may mean you receive less of other accessible assets.
- The amount split to an ex-spouse does not trigger a tax assessment for the paying spouse. Nor is it counted against the receiving spouse's contribution caps.
- Legal advice should be sought to ensure the full terms and conditions of any split is understood and to ensure documents are drafted corrected.
- Fees may be charged for transfers into the receiving spouse's account. You should check the details in the fee section of your Statement of Advice and the Product Disclosure Statement (PDS) for your superannuation fund.

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