

Family law and superannuation

This fact sheet explains how the law deals with superannuation when couples divide their property after the breakdown of a marriage or de facto relationship.

Superannuation splitting law

The superannuation splitting law treats superannuation as a different type of property. It lets separating couples value their superannuation and split superannuation payments, although this is not mandatory. Splitting does not convert it into a cash asset – it is still subject to superannuation laws (for example, it is usually retained until retirement ages are reached).

Options for splitting superannuation

Separating couples may either:

- enter into a formal written agreement to split superannuation
 - ~ A formal written agreement requires that both you and your former partner instruct a lawyer who must sign a certificate stating that independent legal advice about the agreement has been given. Once this agreement is made, you do not need to go to court. The agreement is not registered in court and you must be careful that each of you retains a copy.
- seek consent orders to split superannuation, or
- seek a court order to split superannuation (if you cannot reach an agreement with your former partner)
 - ~ Even when an application is made to a court, it is possible to reach an agreement at any stage without the need for a court hearing.

You should get legal advice about these options.

What you need to do to split superannuation

Step 1 | Obtain valuation information

You need to get information to value the superannuation. You should provide the following forms to the trustee of the superannuation fund:

- Form 6 Declaration. This satisfies the trustee of the fund that you are entitled to get the information for this limited purpose, and
- Superannuation Information Request Form (accompanied by the appropriate Superannuation Information Form).

The superannuation fund may charge a fee for providing the information, and this is paid when you send the forms. The Superannuation Information Kit provides the information and the forms you need. To obtain a copy of the Superannuation Information Kit:

- go to www.familylawcourts.gov.au
- call 1300 352 000, or
- visit your nearest family law registry.

The information from the trustee may be enough to value the superannuation. However, the valuation of some superannuation interests can be complex. An expert may need to provide a further valuation. You should get legal advice about valuing superannuation.

HOW SUPERANNUATION IS VALUED

There are different types of superannuation. The superannuation splitting legislation sets out methods for valuing most types of superannuation, but there are exceptions, including:

- self-managed superannuation funds – they are generally valued with the assistance of an expert such as an accountant
- where the Attorney-General has approved a fund using a different valuation method.

Step 2 Decide the method of splitting

Either enter into a formal written agreement or obtain a court order.

Obtaining a court order

You obtain court orders about the division of property in two ways:

- by consent of the parties, or
 - ~ If you and your former partner 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 of you attending court.
- as a result of a court hearing.
 - ~ Even if you start proceedings, you can reach an agreement at any stage and once the orders recording the agreement are made you do not need to attend court further.

Either way, you need to file an application with the Court. Registry staff can tell you what forms to file.

To start a case in the Family Court, you must file an Initiating Application (Family Law) together with a Financial Statement. The other party will file a Response to an Initiating Application (Family Law) together with a Financial Statement.

To start a case in the Federal Magistrates Court you must file an Initiating Application (Family Law), an Affidavit and a Financial Statement.

To obtain a copy of these forms:

- go to www.familylawcourts.gov.au
- call 1300 352 000, or
- visit your nearest family law registry.

The information from the superannuation fund trustee will help you to complete the court forms. You must disclose all superannuation, even if you do not intend to split superannuation payments.

Informing the superannuation fund

If you are seeking court orders about superannuation, you must tell the superannuation fund trustee about the orders you are seeking. The trustee must have an opportunity to attend the court hearing and object to the orders that you are seeking. This is called providing the trustee with ‘procedural fairness’.

Once the superannuation order is made, whether by consent or after a hearing, it is important to provide a sealed copy of the order to the trustee.

Legal advice

You should seek legal advice before deciding what to do. A lawyer can help you understand your legal rights and responsibilities, and explain how the law applies to your case. A lawyer can help you reach an agreement with your former partner without going to court.

You can get legal advice from a:

- legal aid office
- community legal centre, or
- private law firm.

Court staff can help you with questions about court forms and the court process, but can not give you legal advice.