

Family Law and Super Fact Sheet



Superannuation savings can be split following the end of a marriage, in the same way that other property can be divided up. Couples can do this by agreement, or a court can decide if super will be split as part of a property settlement order.

Does the super splitting law apply to me?

Super splitting applies to couples who have divorced or who are still married but have separated. It's not compulsory, however it is an option that can be used when a couple hasn't finalised their property settlement and is still deciding how their assets will be shared.

De facto relationships are dealt with under State and Territory laws so are not covered under this Commonwealth legislation. The Family Law Act 1975 only deals with marriage in regard to superannuation splitting. Same-sex couples are not covered because it isn't possible for them to marry under Australian laws. You should consider seeking legal advice if this applies to you.

When does it apply?

The super splitting laws cover all property settlements after 28 December 2002. If a couple divorced or separated before this date, the law applies if a property settlement hadn't been finalised at that date.

Is it compulsory to split super?

No. You don't have to agree to do it (unless a court orders it) and a court isn't obliged to order it. A property settlement that is judged fair and equitable by a court may or may not include splitting someone's super account.

What is super splitting and how does it work?

The super splitting laws make it possible for a parting couple to divide their savings between them. This can be either by agreement or, if they are not able to agree, a court can order that super be split.

Two ways to split super:

1. by agreement

Many people do this when separating or getting divorced but you can make an agreement at any time, although an agreement made before marriage won't be valid unless you marry (even if you live together and then separate). There is no automatic 50/50 split so you can decide whether you want to split your super and, if so, how much you want to split. There are special rules about what the agreement has to say to be legally binding so legal advice is essential. When the agreement is binding, a super fund trustee has to comply with it and a court cannot make an order about the super benefit covered by your agreement.

2. by court order

If no agreement is reached, a court can make an order that a super trustee must comply with, providing that all the legal requirements are met. Most super splitting is done this way, with a fund being obliged to act on a court order to give a member's spouse a certain amount of the member's super benefit, or (if the fund is paying a pension to the member) to allocate to the spouse a share of the member's future pension payments from the super fund.

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Can I get information about someone else's super fund?

Before a couple can work out how (or whether) to split a superannuation benefit, they will need to determine how much superannuation is available to be split. To do this you will need to complete a Form 6 Declaration and the Superannuation Information Request Form.

How to apply for information?

You need to lodge a request form along with a declaration that says you need the information to negotiate a super agreement or in connection with family law proceedings where the super fund is likely to be considered.

To protect the privacy of all concerned it's an offence to knowingly write anything false or misleading in a declaration, and this is punishable by imprisonment. These forms are contained in a Superannuation Information Kit.

What information can I obtain?

You can find out how much is in the member's super fund or enough information for you (or the court) to calculate it. Other information you can get depends on what type of super fund is being asked about. Generally you can find out if the super account is splittable and if there are already any claims on it from other people.

Your privacy

CBH Super will only give information about a member's account to someone else when legally obliged to do so. Under no circumstances will CBH Super provide a member's address to their former spouse.

An application for information is treated confidentially and it is illegal for CBH Super to tell the member about it.

Process for splitting a benefit

Accounts can be split immediately following CBH Super receiving the court order or superannuation agreement. CBH Super will send a payment split notice to the former spouse receiving the benefit (the non-member spouse). The non-member spouse (NMS) has the following choices:

- **have the benefit paid into their CBH Super account** (note that a NMS is not eligible to open a new account in CBH Super, but can have family law split amounts paid to an existing account if they are already a member of CBH Super);
- **transfer the benefit to another super fund;** or
- **take the money out as cash** (release conditions may apply).

The NMS will have 28 days from receipt of the payment notice to decide what to do with their portion of the benefit. During the 28 days, their portion of the benefit will be subject to investment returns based on changes in the Fund's unit prices, the same as applies to the member's super account. If we do not receive a response within the 28 day period we will assume the NMS is happy to have the amount paid into their existing CBH Super account (if any). If they don't have a CBH Super account, the benefit may be transferred to the Fund's Eligible Rollover Fund.

Where can I get a Superannuation Information Kit?

Information kits are published by the Family Law Court of Australia. This do-it-yourself kit contains the paperwork you need to apply for information about super. You can download the kit from the 'Forms & Fees' section of the Family Law Court website at www.familycourt.gov.au or by typing 'Superannuation Information Kit' in the search box on that website's home page.

Warning: This fact sheet is general advice only and does not take into account your individual objectives, financial situation or needs. We encourage you to consider discussing your superannuation arrangements with a licensed financial adviser to obtain financial advice that is tailored to suit your own personal circumstance.