

Superannuation | Empower Family Law & Mediation

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Details:

Services

Superannuation

Superannuation is property for the purposes of a property division between a separating couple. Because superannuation often represents many years of employer and personal contributions and compound interest, it is usually a significant asset in the property pool of separating couples.

Am I entitled to a super split?

If you were married, there is no minimum length of marriage. Either of you can apply for a superannuation split (or a broader property settlement) after separation, provided you do so within 12 months of your divorce becoming final.

If you were in a de facto relationship, you can only ask the Court to split superannuation (or otherwise apply for it) if at least one of the following applies: the relationship lasted 2 years or more; there is a child of the relationship; the relationship was registered under a State or Territory relationships register; or you made substantial contributions to the relationship and would suffer serious injustice if the Court did not make an order. De facto applications must generally be made within 2 years of separation.

How superannuation can be split

Superannuation can be split either by:

An order of the Federal Circuit and Family Court of Australia.

A superannuation agreement (a financial agreement that deals with a superannuation interest); or

In some cases, for example where an interest can't yet be split, the Court can make a flagging order. This stops the fund from paying out the benefit and defers the decision on how to split it to a later date.

What splitting doesn't do

Splitting superannuation does not convert superannuation into cash. Instead, the sum is 'split' from the member spouse's superannuation fund and transferred to another fund, either a new fund for the non-member spouse or rolled out to another fund. The split will remain preserved in accordance with the superannuation laws and the individual fund's conditions of release.

How the split is calculated

A common starting point is to add together the balance of all superannuation funds, divide the total by two, and split from the larger fund to equalise the balances. This is a starting point only. There is no rule that superannuation must be equalised, and the Court (or you, by agreement) must consider what is just and equitable in your circumstances.

For example, you might trade off superannuation for a greater share of other property, or equalisation might not suit a short relationship where one person started with much more super.

Worked example

Amir has \$420,000 in superannuation and Beth has \$180,000. Combined, their superannuation totals \$600,000. To equalise, Beth would generally receive a split of \$120,000 from Amir's fund, bringing each of them to \$300,000. This is a simplified illustration only and the actual outcome in any matter depends

on contributions, current and future circumstances needs and what is just and equitable.

Defined benefit funds and self-managed super funds

Not all superannuation interests are straightforward to value. Defined benefit interests, which are common in older public sector and corporate funds, are calculated by formula rather than account balance, and generally require a valuation from a qualified actuary.

Self-managed superannuation funds (SMSFs) need input from the fund's accountant to identify its assets and liabilities, and if the SMSF holds real property, that property will usually need its own valuation.

We work with actuaries, accountants and valuers experienced in family law matters to make sure these interests are properly identified and valued.

Getting information about your former partner's superannuation

The Family Law Act 1975 requires separating parties to provide full and frank disclosure of their financial circumstances, including details of all superannuation funds and the balance of each.

If you don't know the value of your former partner's superannuation, you (or your lawyer) can apply directly to their superannuation fund using the Superannuation Information Request Form or seek a Court order requiring disclosure.

We can help you identify the right fund and prepare this request.

How we can help

At Empower Family Law & Mediation, we have experience advising on superannuation matters, including defined benefit, self-managed and accumulation funds, and we work with actuaries, accountants and valuers who specialise in family law. Please contact us on (03) 7020 6542 to discuss how your superannuation fits into your overall property settlement.

FAQ's

Will I automatically get half of my former partner's super?

No, while it is often the case that superannuation entitlements are split 50/50%, or 'equalised', there is no automatic 50/50 split. The Court (or the parties, by agreement) need to work out what is just and equitable, which may or may not result in an equal split.

Can I access my share of the split super straight away?

A super split moves an amount from one fund to another (or to a new account). It does not convert to cash and remains subject to the same preservation rules and conditions of release as any other superannuation.

What if we can't agree on how to split our superannuation?

You can apply to the Federal Circuit and Family Court of Australia.

We can advise you on your options, including negotiation, mediation and if necessary, Court proceedings.

Does it matter if we were never married?

De facto couples are covered by the same superannuation splitting framework, provided you meet the eligibility criteria set out above.

Speak with us

Your first 30-minute consultation is free. Call (03) 7020 6542 or contact our team to discuss your circumstances and next steps.

Phone : (03) 7020 6542

Email : info@empowerfamilylaw.com.au

Let us be your voice in troubled times.

Contact Us

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Is superannuation included in a property settlement after separation?

Yes. Superannuation is treated as property for family law purposes and is considered with the broader asset pool. A super split may form part of the overall settlement, but there is no automatic rule that every fund must be divided or that balances must be equalised. The result must be just and equitable in light of contributions, the relationship history and the parties' current and future circumstances. For married people, there is no minimum marriage length, although a property application generally must be made within 12 months after a divorce becomes final. De facto partners must satisfy an eligibility gateway and generally apply within two years after separation. Obtain advice about the entire settlement rather than viewing superannuation in isolation from housing, debts, cash flow and other assets.

How does a superannuation split work, and can the receiving person withdraw it immediately?

A split can be made through a Court order or a superannuation agreement that meets the legal requirements. In some cases, such as an interest that cannot yet be split, the Court may make a flagging order so the fund cannot pay the benefit until the issue is determined later. The fund's procedural requirements must be followed, and proposed orders commonly need to be provided to the trustee before they are made. A split does not usually turn superannuation into cash. The allocated amount is transferred or rolled into an eligible superannuation interest for the receiving person and remains subject to preservation rules and ordinary conditions of release. The settlement should account for the difference between accessible assets and retirement savings, including the practical effect of exchanging superannuation for a larger share of other property.

How is the amount of a superannuation split calculated?

Adding both balances and equalising them can be a useful illustration, but it is only a starting point. The page gives an example in which \$420,000 and \$180,000 combine to \$600,000, so a \$120,000 split would leave each person with \$300,000. That arithmetic does not establish that equalisation is the appropriate legal outcome. The actual division depends on contributions, relationship length, other property, future needs and what is just and equitable overall. One person may retain more superannuation while the other receives more accessible property, or a short relationship may justify different treatment of a large starting balance. Tax components, preservation and fund rules can also affect the practical result. Advice should consider the proposed split within the entire property settlement.

How are defined benefit interests, self-managed super funds and missing fund information handled?

A defined benefit interest may not be represented accurately by the balance shown on a statement because the benefit is calculated under a formula. A qualified actuary may be needed to value it. A self-managed super fund requires examination of its assets and liabilities, often with input from the fund's accountant, and real property or other significant assets held by the fund may require separate valuation. Both parties owe full and frank financial disclosure, including details of superannuation interests. If a former partner's fund or balance is unknown, a Superannuation Information Request Form or Court-based disclosure process may be available. Complex interests should be identified early because valuation and trustee procedures take time. A lawyer can coordinate with actuaries, accountants and valuers and ensure the proposed orders are workable for the particular fund.