



Superannuation splitting in family law property settlement

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Many people do not think about superannuation when it comes to [negotiating property settlement](#) after separation. Superannuation is an increasingly significant asset of a relationship and should be considered when dividing property. In family law matters, superannuation is usually divided during the process of a property settlement and is known as superannuation splitting.

Superannuation splitting during property settlement does not convert to cash

Superannuation is treated as property, although it differs from other types of property, such as real estate or money in the bank, because it is held in trust.

Splitting superannuation does not convert funds into cash. Instead, they remain subject to superannuation laws. This generally means that any funds you may receive from your former partner's superannuation will be deposited into your own super fund and only be accessible upon you meeting certain conditions of release, such as severe financial hardship or reaching retirement age.

Valuing your super for superannuation splitting purposes

The first step to splitting superannuation is to obtain information to value the superannuation in each of the relevant funds. There are different types of superannuation interests, including accumulation, defined benefit and self-managed superannuation funds. It is important to understand what type of superannuation interests you and your former partner have and their nature, as it will inform how the superannuation is valued and whether it can be split.

It is not uncommon for a party to have limited knowledge of their former partner's superannuation, particularly where their ex-partner has managed the household finances. We can assist you from the outset to obtain this information. This may include helping you to apply to the trustee of the relevant superannuation fund using the required forms or making an application to the Court if necessary.

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Once the information is obtained, the best way to value the superannuation interest can be determined. For example, self-managed superannuation funds are usually valued with the assistance of an expert, such as an accountant. There are also certain superannuation interests that have prescribed valuation methods under superannuation splitting laws which must be complied with. The valuation of some superannuation interests can be complex, so it is crucial to seek legal advice early.

What are your options for splitting superannuation?

If you and your former partner agree as to how your superannuation should be split, this agreement can be formalised by applying to the Court for Consent Orders or by entering into a Financial Agreement (sometimes referred to as a Binding Financial Agreement).

Entering into a financial agreement

[Financial Agreements](#) must comply with the requirements and formalities specified under the *Family Law Act 1975* (Cth). It requires both you and your former partner to obtain independent legal advice, and there are certain rules about what your respective lawyers need to advise on.

Applying for Court Orders

Consent Orders are subject to review and approval by a Registrar of the Court. Consent Orders are usually made in Chambers without you having to physically attend Court. Once Orders are made, the agreement becomes legally binding on you and your former partner and on the trustee of the superannuation fund.

If you and your former partner cannot reach an agreement about how to split your superannuation, you can apply to the Court for orders.

Before the Court can make a superannuation splitting order, the trustee of the superannuation fund must be notified and provided with a copy of the orders you are seeking. The trustee will have the opportunity to object to the orders being sought or attend the Court hearing (if applicable). Once the superannuation orders are made, whether by consent or after a hearing, a sealed copy of the orders must be provided to the superannuation fund trustee so that they can implement the split.

There are consequences if Court Orders are breached. You can read more about this in our blog, ["Compliance with Family Law Financial Orders"](#).

How a family lawyer can help

Giving consideration to superannuation held by both parties is a crucial part of any property settlement negotiations. This is particularly important where one party may not have worked as many years compared to their former partner and has a limited amount of superannuation.

There is no set way to split superannuation as every relationship is different. It is, therefore, important to obtain legal and financial advice to ensure that any superannuation split is tailored to your individual circumstances and needs.

Contact us to speak with one of our experienced family lawyers about your circumstances and to determine the best way forward.

Contacting Smith Family Law

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