



Visibility of superannuation assets during family law property settlement

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Superannuation is a significant asset of a relationship and can often make up a large portion of the [overall asset pool](#) in a family law property settlement. It is important to consider the superannuation held by both parties as part of any property settlement negotiations, including the division of superannuation, otherwise known as [superannuation splitting](#). But what if a party does not disclose, or under-discloses, their superannuation interests?

Since 1 April 2022, amendments made to the *Family Law Act 1975* (Cth) and taxation legislation have enabled the sharing of information of a party's superannuation assets between the Court and the Australian Taxation Office. This has vastly improved the visibility of superannuation interests in [property settlement proceedings](#).

Before the visibility of superannuation laws were introduced

In the past, gaining access to superannuation information was reliant on your former partner being open and forthcoming about where their superannuation is held. Whilst there is an existing requirement at law for parties to provide [full disclosure of their assets](#), including their superannuation entitlements, it is not uncommon for parties to not comply with this requirement.

There is also a mechanism that enables parties to obtain information about their former partner's superannuation interests directly from the superannuation funds. This involves a party completing a Superannuation Information Request Form and Form 6 Declaration and submitting this to the Trustee of their former partner's superannuation fund.

However, this process requires a party to know the name of their former partner's superannuation fund(s) so that the request can be directed to the Trustee of the correct superannuation fund. It is, therefore, dependent on pre-existing knowledge of the name of

your former partner's superannuation fund(s) or your former partner disclosing details of their superannuation interests.

Introduction of visibility of superannuation laws

From 1 April 2022, parties to current family law property settlement proceedings in the Court can apply directly to the Court to request their former partner's superannuation information held by the Commissioner of Taxation.

This request can be made by completing and submitting the approved [Superannuation Information Request](#) form using the online Commonwealth Courts Portal. The Court will then obtain this information from the Australian Taxation Office and provide it to the parties and their lawyers, usually within 7 days of the request being made.

What information will the visibility of superannuation laws provide?

Generally, the Australian Taxation Office will provide the following information in response to a request made to the Court:

- The identity and value of each superannuation interest held by your former partner, as reported to the Commissioner of Taxation;
- Any account in your former partner's name regarding small amounts of ATO-held superannuation; and
- Any amount payable to your former partner under any scheme that the Government offers assistance, such as to low-income earners.

How do superannuation visibility laws affect my family law property settlement?

The visibility of superannuation laws allows parties in family law proceedings to gain a more comprehensive understanding of their former partner's superannuation assets. It helps parties to avoid the complexity and costs involved in obtaining superannuation information from multiple superannuation funds or subpoenaing employment records to reveal where superannuation is held.

It further makes it difficult for parties to hide or not fully disclose their superannuation assets which would typically otherwise be available for division after separation or divorce. This is particularly vital where one party may not have worked as many years compared to their former partner and has a limited amount of superannuation.

Visibility of superannuation laws assist parties to reach a fairer and more timely family law property settlement.

Get help from a family lawyer

Whether you are a party to a family law proceeding, going through separation or contemplating separation, it is important to seek legal advice about your individual circumstances and to determine the best way forward. Contact us and speak with one of our experienced family lawyers.

Contacting Smith Family Law

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