

Splitting superannuation AFTER SEPARATION

When you separate and are working out “who gets what”, superannuation can often be an after-thought and less visible than the other property to be divided.

However for the purposes of a family law property division, superannuation forms part of the asset pool and is treated as ‘property’. It is important that it is factored in.

Under the Family Law Act 1975, superannuation can be “split”, with one person receiving superannuation from the other person’s entitlements.

A word of warning - the superannuation split does not convert the superannuation to cash, and it is still subject to superannuation laws.

Typically, superannuation accumulated during the relationship or marriage will be split so that each person ends up with the same amount of superannuation.

However, this is not always the case and with all family law matters, your individual circumstances need to be considered when determining what is appropriate.

Your needs and what is valuable to you should also be part of any discussion. You may for example prefer to receive more cash assets instead of superannuation or vice versa.

One of the barriers to working out a superannuation split is that following separation, you may not know what superannuation entitlements your former partner has. There is a duty to provide full and frank disclosure of your financial circumstances, which includes any superannuation entitlement you have.

Requesting a current superannuation statements is a common starting point. Before issuing court proceedings, it is also expected that a completed

superannuation information form for any superannuation interest has been exchanged.

There is also now an ability to apply to the Federal Circuit and Family Court of Australia requesting superannuation information held by the Commissioner of Taxation.

This option is available when there are current proceedings for property orders on foot. This process is designed to provide greater transparency about superannuation where the other person may not have provided full disclosure.

Rather than an after-thought, superannuation should be a key part of any discussions about a family law property division, and disclosure is a must! If you’re not sure where to start, speak to a family lawyer about your entitlements and options.

This article is general information only and is not legal advice or a substitution for such advice.



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