

Superannuation in family law property settlements: how super is found, valued and split

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Superannuation is often one of the largest assets in a relationship, sometimes second only to the family home. In some cases, one party may have significantly more superannuation while the other has less because they have spent time caring for children or working part time. If superannuation is not properly identified and considered, this can lead to the party with less superannuation experiencing a financial disadvantage.

This applies whether you were married or in a de facto relationship - under Australian family law, superannuation is treated in the same way following the breakdown of marriage or a de facto relationship.

Australian family law recognises superannuation as property. This means it must be disclosed, valued and included when working out a just and equitable property settlement. There are now systems in place to help make superannuation more visible and harder to hide, including a Court process to request superannuation information directly from the Australian Taxation Office (ATO).

Understanding how superannuation is identified and shared during separation can help you protect your long-term financial future. This article explains how superannuation is disclosed, valued and split in a property settlement, and what you can do if you think your former partner has not been upfront.

Does superannuation get divided in a property settlement after separation?

Superannuation forms part of the property pool and can be divided under the Family Law Act 1975.

Unlike other assets, superannuation entitlements are subject to strict rules of release. Generally, superannuation entitlements cannot be accessed by the parties until retirement. Rather than accessing the funds at the time of any property settlement, the party's respective superannuation entitlements may be split. This means that one party (generally the party with greater superannuation entitlements) will transfer a portion of their superannuation entitlements to the other party's superannuation fund.

How can I find out my partner's superannuation balance?

Parties have a duty to provide complete and up-to-date superannuation information. This usually includes:

- an ATO print out of their superannuation funds;
- recent superannuation fund statements;
- a current balance for all superannuation funds;
- details of any self-managed superannuation fund;
- records of contributions and rollovers; and
- tax and financial documents.

If someone believes their former partner has not fully disclosed their superannuation entitlements, they can apply to the Court for a Super Information Request. This allows the ATO to share relevant superannuation fund details with the Court.

New rules improving visibility of superannuation - Super Information Request from the ATO

The Federal Circuit and Family Court of Australia can now request superannuation information directly from the ATO. This helps to locate any superannuation funds that one party may not disclose voluntarily. It is particularly helpful where there has been financial control, poor financial transparency or family violence. It also reduces delays where one party refuses to comply with their obligation to provide full and frank financial disclosure.

How is superannuation valued in a property settlement?

Superannuation should be valued correctly before a property settlement agreement is formalised.

The type of fund affects how superannuation is valued. Common types include the following:

- Accumulation funds, where the balance increases based on contributions and investment returns;
- Defined benefit funds, where a formula determines the balance; and
- Self-managed superannuation funds, which hold assets such as property or shares.

Most accumulation funds can be valued using the account balance. Defined benefit funds often require an 'actuarial valuation' because their value depends on factors like length of service and salary. Self-managed superannuation funds can be valued by

valuing the assets held by the fund.

Accurate valuation ensures a just and equitable division. Underestimating superannuation, particularly in defined benefit funds, can result in a significant financial loss to one party.

Superannuation splitting in family law

A superannuation splitting order does not give someone access to funds immediately. Instead, superannuation is transferred into their superannuation fund and, the receiving fund holds those funds until normal superannuation release rules apply.

There are two ways to legally document a superannuation split:

- Consent orders filed with the Court;
- A Binding Financial Agreement prepared with legal advice.

The proposed superannuation splitting orders/agreement must be approved by the superannuation fund. Once the property settlement agreement has been formalised a certified copy of the order/agreement must be provided to the superannuation fund before the fund will action the transfer of superannuation. For more information in relation to this process, we refer you to our previous article ‘Superannuation splitting under the family law’.

What if my partner is hiding superannuation?

Failing to disclose superannuation is a breach of a party’s obligation to provide full and frank financial disclosure. If a party attempts to hide assets, the Court may:

- order the release of information from third parties;
- re-open a settlement if non-disclosure is discovered later;
- make cost orders against the non-complying party; or
- adjust the property division to account for hidden funds.

The ability to request superannuation information from the ATO helps reduce the risk of non-disclosure of superannuation entitlements.

Superannuation and family law: frequently asked questions

Can superannuation be split during separation?

Yes. The Court can order superannuation to be split, or parties can agree to do so.

Do I get immediate access to superannuation after a split?

No. The funds stay in your superannuation fund and can only be accessed under normal release rules.

What if my partner refuses to disclose super?

The Court can request superannuation information directly from the ATO.

Do de facto couples have the same superannuation rights?

Yes. De facto couples are treated the same as married couples.

Does family violence affect superannuation division?

Yes, it can. Family violence may affect the assessment of contributions and current and future circumstances, for more information in relation to the assessment of contributions and current and future circumstances, we refer you to our previous article, ‘How are assets divided after separation or divorce’.

Get help with superannuation in your property settlement

Superannuation plays an important role in long-term financial security, and visibility is critical to achieving a just and equitable property settlement. It is often worth more than people realise and is easy to overlook during a stressful separation. Australian family law provides mechanisms to locate, value and divide superannuation fairly, including access to ATO records where needed. Our family lawyers can help you identify, value and protect your entitlements.

Taking early steps to understand superannuation and ensure full disclosure can protect your financial future during separation.

If you are separating and are unsure whether all superannuation has been disclosed, our family lawyers can help. Contact Emera Family Law today to arrange a consultation at our Melbourne or Sunshine office.

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.