



# **FAMILY LAW & SUPERANNUATION**

E-BOOK



# Family law and superannuation:

## what you need to know

*When a marriage or de facto relationship breaks down, it can be a stressful time and the task of separating finances can often add to the pressure. Getting the right advice can help you make the tough financial decisions about your assets and superannuation.*

Whenever there is a change to your financial situation, a review of your financial plan is necessary – even more so when a complicated matter like splitting superannuation is involved.

### What is the first step?

#### **Get expert advice**

When a marriage or de facto relationship breaks down, many couples choose to separate their finances by going through a property settlement. In this process, getting financial and legal advice is essential.

#### **Your property and possessions**

A property settlement is the legal process of dividing a couple's assets when they become separated or divorced. Assets may include the family home, investment properties, ownership in a business, valuables, investments and savings. A property settlement can be reached by mutual agreement, or where an agreement can't be made, the court can determine the settlement.

#### **Your superannuation**

Superannuation is also included as an asset that can be divided as part of a property settlement. All or part of a superannuation benefit can be transferred from one spouse to the other. This also applies to de facto couples (including same sex relationships) living together on a genuine domestic basis and relationships registered under particular State or Territory Laws.<sup>1</sup> Couples have the option of drawing up a financial agreement on how superannuation is to be divided. This can be made at any time during the relationship.

### What parts of super can be split?

Superannuation accounts (both in accumulation and defined benefit funds), account based pensions and all other superannuation pensions and annuities can be split in a divorce or de facto relationship breakdown.<sup>1</sup> Accounts with a balance of less than \$5,000 cannot be split under Family Law. There are also limitations under Family Law on the splitting of non-commutable pensions and annuities of less than \$2,000 pa.

### **Splitting superannuation**

The process of splitting superannuation can be broken down into six key steps:

<b>1</b>	<b>Request for information</b>	A request for information is made by either spouse, regarding the details of a super benefit.
<b>2</b>	<b>Response to request</b>	A response is made with the details of the super benefit.
<b>3</b>	<b>Put account on hold</b>	A hold on some types of withdrawals can be placed on the account by agreement of the two parties or by order of the court.  This is not essential but may be used as a precaution for settlements that can't be reached immediately.
<b>4</b>	<b>Settlement</b>	The couple, or the court, decide the settlement terms and the proportions of the benefit each spouse will receive.
<b>5</b>	<b>Splitting instructions</b>	Instructions are sent to the trustee of the super fund, indicating the method and proportion of the split.
<b>6</b>	<b>Splitting the benefit</b>	Part or all of the member's superannuation is transferred to the non-member spouse (either a new interest is created in the same fund for the non-member spouse i.e. his/her entitlement, or that entitlement is transferred or rolled over to another super fund unless the non-member spouse has satisfied a condition of release).

### **The importance of legal advice**

Both spouses will also need to appoint a legal adviser to split a superannuation benefit of one of the parties. Even if you don't go to court, certain parts of the superannuation splitting process require you to declare

that you have received independent legal advice, and your legal adviser to certify that they have provided advice.

A legal adviser will also have experience in relationship breakdown procedures and can assist you through the property settlement by:

- advising you on the relevant laws and how they apply to your situation
- providing you with guidance on the division of assets and your entitlements
- assisting with any documentation that you may need during the process
- letting you know of any obligations you may have towards your super fund
- representing you in court if necessary.

## The role of your financial adviser

For most people, a relationship breakdown is an extremely stressful and emotional time. The thought of making important life-changing decisions can be overwhelming. A financial adviser can provide you with the knowledge and guidance to help you feel more confident about the decisions you make about your financial future.

A financial adviser can also assess the impact on your overall financial situation and provide a recommendation about appropriate investments for your portion of the settlement. They can also provide ongoing advice regarding your super benefits and general financial position.

1. There are some exceptions for same sex and de facto relationships in Western Australia. A WA court will still take super into account when splitting your property

## Speak to us for more information

If you would like to know more about asset classes and the fundamentals of investing, contact Shannon Smit at Smart Business Solutions Financial Planning for more detailed information on the best approach for your situation.

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