

Can superannuation be split?

In a Property Settlement, all superannuation can be valued and taken into account. Some superannuation can be split between the parties but some cannot. For example, it is not possible to split superannuation of little or no value because it would not be cost effective to do so. Superannuation is dealt with in the same way as other property settlement Orders. The final agreement can be by way of a Court Order, Consent Orders or Binding Financial Agreements.

Using the process provided in the Family Law Act, it is possible to have your partner's superannuation valued even if they do not want to co-operate.

Superannuation splitting law

The **superannuation splitting** law allows for separating couples to value their superannuation and split entitlements. The formal requirements and procedures relating to the **superannuation splitting** law are complex and it is important that you seek legal advice if you want to consider **splitting superannuation**.

When superannuation entitlements are split, this does not translate into a cash asset. The entitlements are still subject to superannuation laws and will, under most circumstances, be held until you reach retirement age. Only on the grounds of hardship might a limited amount be released as cash.

The different options for splitting superannuation are as follows:

Option 1

In agreement, both parties devise and sign a payment splitting agreement indicating how the superannuation interest is to be split, and serve a copy of it on the trustee of the superannuation fund. To do this both parties *must seek* independent legal advice about the agreement and together instruct a lawyer to sign a certificate stating that independent legal advice about the agreement has been given. Both parties must keep a copy of the signed certificate. This agreement is not registered in court. You **MUST** seek legal advice to make a payment splitting agreement. The payment splitting agreement is only legally binding if it includes a certificate signed by a legal practitioner indicating that each party has received independent legal advice about the agreement.

Option 2

After coming to an agreement about how to split the superannuation, both parties seek a Consent Order from the Court formalising and recording the agreement. This can be made by a judge alone, without either party having to attend court. The judge will discern whether the orders you seek are just and equitable and enforceable by law. To have your orders approved without delay or extra expense it is wise to seek legal advice before submitting them. The wording of superannuation splitting orders can be complex and must be accurate if they are to be accepted; OR

Option 3

If an agreement cannot be made between the parties, it is necessary to seek a court order to **split superannuation**. This generally involves a hearing and can be costly. It is of course preferable if you can reach an agreement before a court hearing, and our lawyers at Aaron Legal will help you as much as possible to do this. You have the opportunity to reach an agreement at any point in proceedings and avoid a costly trial.

If you are seeking court orders about splitting superannuation, the trustee of the superannuation fund must be informed about the orders you are seeking and offered the opportunity to attend the court hearing and object to the orders. Once the superannuation orders are made, it is important to provide a sealed copy of them to the trustee immediately.

Valuing superannuation for the purpose of splitting it

For the purposes of **splitting superannuation**, you will need to work out its value. This can be a complex process. The first step is to request that you be entitled to your superannuation information from the trustee of the fund (by submitting the appropriate declaration and information forms). The superannuation fund will usually charge a fee for processing this request. Under the superannuation splitting law, you can find out about the value of the superannuation interest and other information that will enable you or the court to calculate its value.

Sometimes the information from the trustee is not enough to value the superannuation and a further valuation will be required from an accountant who is an expert in this field. This can be costly so you should seek legal advice about this.

Our lawyers at Aaron Legal will explain to you clearly the requirements and procedures, and help you take the action needed for a fair and equitable outcome.

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