

Superannuation

Superannuation and divorce

Under changes to the Family Law Act 1975 that took effect in December 2002, all superannuation assets, not just amounts that accrued during the marriage, are treated as property and are included in the property settlement on divorce or separation. This means that an amount of the member's super can be allocated to the non-member spouse who will be entitled to that amount plus or minus any investment returns.

Who is covered by the legislation?

The legislation applies to legally married couples only. De facto and same sex couples are not recognised under the Act.

It applies to any property settlements that were in progress (but not finalised) at 28 December 2002 and to any property settlements that commenced after this date.

However, property settlements entered into by way of Court Order or financial agreement prior to this date, or proceedings that have been finalised, are not covered by the legislation and the non-binding nature of these Orders will remain unchanged. Couples in these situations cannot seek a new settlement under the legislation.

Which superannuation payments can be split?

In general, any superannuation benefit in the growth phase or payment to a member can be split. This includes lump sum payments on retirement, pension income (including disability pensions) that the member is receiving at the time of separation/divorce and payments to reversionary beneficiaries.

Payments for hardship, temporary incapacity, to children and benefits less than \$5,000 cannot be split.

If a married couple makes an agreement (either before, during or at the end of marriage) they will be able to direct their superannuation company about the way they want the superannuation to be treated in the event of divorce or separation.

What does splitting superannuation mean?

Splitting superannuation means creating a new super interest for the non-member spouse, and reducing the member's interest by the agreed amount.

Payment splitting agreements either specify a dollar amount or a proportion of the member's benefit which is to be paid to the non-member spouse. This constitutes the base amount payable to the non-member.

In most cases the benefit is split immediately. Where the benefit is flagged for a future split, the Trustee needs to determine the adjusted base amount until the non-member spouse's benefit is actually split from the member's benefit and paid into the nonmember spouse or a new interest is created.

Can future payments be split?

An alternative approach for separating couples is for an agreement or order to be made that 'flags' the member record for a future payment split. This approach is suitable where an accurate value of the superannuation cannot be determined at the date of the hearing or the member is close to satisfying a condition of release.

Your superannuation company will not be able to pay the benefit until the flag is lifted by either the agreement of the parties or the Court.

What can a non-member spouse do with their portion of the benefit?

If an account balance is split at the time of divorce, the non-member spouse may join the member's super company or roll it over into another super fund.

Future Wealth Planners advice

Although the information contained in this fact sheet is of a general nature be aware that government legislation may be amended in the future and therefore it is vitally important that you seek advice before making any decisions.

Future Wealth Planners Pty Ltd
Corporate Authorised Representative of
Choice Future Planning Pty Ltd
Australian Financial Services Licence No 222755
4a Centro Avenue Subiaco WA 6008 | PO Box 338 Morley WA 6943



9382 2225



9382 2207



www.futurewealthplanners.com.au

Disclaimer: This is general information only and is not intended to provide advice to particular investors, or take into account an individual's investment objectives, circumstances or needs for investment. Investors should first consult Future Wealth Planners Pty Ltd. To the extent permitted by law, no liability is accepted for any loss or damage as a result of any reliance on this information.