

‘SUPER SPLIT’ IN A PROPERTY SETTLEMENT – WHAT YOU NEED TO KNOW

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Background

The law in relation to how superannuation is treated in a family law property settlement changed dramatically in 2002 with amendments to the Family Law Act. Prior to December 2002, the options for dealing with superannuation in a property settlement were very limited.

Since 2002, superannuation is now treated as ‘property’ and is able to be ‘split’ by agreement or court order. Whether or not a superannuation interest will in fact be split and in what proportions will depend upon the circumstances of the case. Potentially, the superannuation policy can be “split” in any percentage (it does not have to be 50/50%) however a split does not mean a payout of the policy, rather it is a “rollover” of an interest. A fund of less than \$5,000 cannot be split.

Relevant factors for considering if a split should occur, include:

- Whether there are children
- If, by splitting the superannuation, the primary carer of the children will be able to keep the family home
- The needs of the parties for cash and saleable assets
- The value of all the property and the proportion of the property pool that is made up of superannuation
- The type of super
- The ages of the parties
- The length of time before the parties can access their super
- Any tax implications.

Types of Super

There are three main ‘types’ of superannuation funds:

- Accumulation fund – a superannuation fund that provides benefits to members based on contributions and earnings, less fees (e.g. like a bank account balance).
- Defined benefit fund – a superannuation fund in an eligible superannuation plan which provides benefits to members according to a formula set out in the trust deed. The formula usually takes into account the member’s length of service and final average salary.
- Hybrid funds – a superannuation fund that is a combination of a defined benefit fund with an accumulation component.

Defined benefit interests are becoming less common and therefore most parties will be dealing with accumulation interests.

Other terms that parties should be familiar with when looking at superannuation include:

Growth phase – where no benefit has been paid in relation to the interest and no action has been taken by the member under the rules of the fund to cash in the benefit.

Payment phase – is defined as an interest that is not in the growth phase.

How do you get information about superannuation?

Each spouse can request information from the Superannuation Trustee for either their policy or their spouse's policy. The Trustee of the fund is entitled to charge a fee for providing the information. The Trustee is not allowed to give out the address of the member, or notify the member that an information request has been received from a non-member (the other spouse).

The Trustee is required to provide a statement to the requesting spouse outlining:

- The value of the superannuation interest as at certain dates
- Any withdrawals made between those dates
- Details of any payment flags (i.e. notifications) or previous splits
- Any fees that it will charge for payment splits and flags
- The member's eligible service period and date that their membership in the fund commenced
- Preservation and components of the interest
- Vesting terms and scales
- Details regarding reversionary beneficiary entitlements if the benefit is in the pension phase

Valuing a superannuation interest

Superannuation interests that are going to be split must be valued in accordance with the Family Law (Superannuation) Regulations 2001. Caution should be had in simply relying on an annual member statement for the value of the superannuation entitlement.

Benefits of super splitting

Due to the greater flexibility in the way that property settlements can be structured, the majority of property settlements today include a 'super split'.

Unsure of what will happen to your Super in a Property Settlement? We highly recommend that you seek professional legal advice to be aware of your options and possible outcomes. We offer a fixed-fee initial consultation. Please call us on (07) 3221 4300 to make an appointment with one of our Family Law specialists.

