



# Family law and superannuation splitting

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Aside from the family home, superannuation has become one, if not the most valuable asset accumulated by individuals during their working life. In this blog, we look at how superannuation is treated in [family law property settlement](#) and the concept of superannuation splitting after separation or divorce.

## Is superannuation considered property for the purposes of a property division?

Yes, however, de facto couples in Western Australia who are separating cannot split superannuation. Married couples who are divorcing in Western Australia can apply superannuation splitting during property settlement negotiations.

Under the *Family Law Act 1975*, superannuation is classified and treated just like any other property; that is, it is property available for division following separation (in every jurisdiction of Australia, save for WA).

In Western Australia, de facto couples fall under the *Family Court Act 2004* and, to date, are not permitted to split superannuation entitlements. However, each party's superannuation balance is not ignored.

## How superannuation splitting works in property settlement matters

In many property settlements, the superannuation interest of one party is "split", and a portion of that party's superannuation interest is transferred to a superannuation interest in the other party's name.

That interest may be in the same fund or another fund. There are specific procedural (and at times, technical) requirements that must be adhered to in order for this superannuation split to occur.

Superannuation entitlements are “split” in one of three ways:

A [Financial Agreement](#);

A Consent Order; or

An application is made to the Court seeking an Order for superannuation entitlements to be split and the Court makes said Orders.

## How is superannuation splitting done?

There are a number of steps that must be followed to split superannuation entitlements.

Valuing the superannuation interest. It is important an accurate valuation of your and your partner’s superannuation is obtained prior to seeking a split. Often this can be simply done by obtaining an up-to-date statement from your fund.

Negotiate the splittable amount. [Legal advice should be sought](#) to ensure any superannuation split negotiated is just and equitable and will be accepted by the Courts.

Notify your super fund. Superannuation funds must be notified of a proposed superannuation split. The fund must also be provided with the proposed agreement, and they must approve the agreement, to ensure it meets the requirements of their respective trust deed and rules.

Apply to the Court for Orders. This can be done jointly via Consent Orders, or if the parties do not consent, an application is to be made, and an Order of a Judge or Magistrate made.

Financial Agreement – if the parties choose to [enter into a financial agreement](#), as opposed to Orders from the Court, they will need to ensure the terms of the agreement meet the necessary requirements.

Once Orders have been made or a financial agreement has been made, the superannuation fund will require a certified copy of the Orders approved by the Court or the financial agreement to affect the superannuation split.

## Superannuation splitting for de facto couples in Western Australia

In Western Australia, superannuation is not considered an asset for the purpose of a property division between de facto couples following separation.

As such, superannuation cannot be split or transferred between de facto spouses living in WA and is taken into account, in a property settlement, as a financial resource only.

There have been some significant recent progress made to amend these rules to enable de facto partners in Western Australia to split or transfer superannuation. It is hoped these changes will come into effect in 2021.

## Get help from a family lawyer

If you have recently separated from your partner and you require assistance with understanding your rights with respect to property matters and the division of your assets (including superannuation), we recommend you seek legal advice from an experienced family lawyer as early as possible.

Property settlements can be stressful and often a complicated process. Meillon & Bright's team of experienced family lawyers are specialists in property settlements, including drafting superannuation splitting agreements for Court Orders or Financial Agreements.

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*The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.*