

Property Settlement - Superannuation and Family law

Superannuation is treated as property by the Family Court. In most situations, if a terminating event has not occurred and a party is not at the minimum retirement age, then in reality superannuation is not property as it cannot be accessed or spent by the member. However, The *Family Law Act*, has now been amended so that a superannuation interest is treated as if it were property.

In effect, this means that in any property settlement (whether between married couples or de facto couples) a superannuation interest of a party must be identified and must be valued. There are specific regulations in the *Family Law Act* that prescribe how such superannuation interests are to be valued.

A party is able to find out the value and details of the other party's superannuation interests by signing a Declaration and submitting their request for information about that party's member benefit accounts.

The *Family Law Act* also allows a party to split their superannuation interest (all of it or part of it) to the other party. This can either be done by consent between the parties or the Court can make an Order.

In most cases, when an accumulation fund is split (and that fund is still in the growth phase) then part of the superannuation of a party can be transferred to another complying fund of the other party.

In those cases, a superannuation split does not mean that the superannuation can be transferred to the other spouse and taken as cash or spent by that party. They must place it in their own complying Super Fund.

It is often difficult for a party to determine what is in their own best interests as to what property and superannuation mix they should receive in a property settlement.

As Family Lawyers, we do not provide financial advice to clients about this important decision.

Therefore, when considering the size and impact of any superannuation split, one should obtain proper advice from a qualified financial adviser as to what is the best arrangement in relation to superannuation having regard to their particular circumstances.

The *Family Law Act* and Regulations place specific and stringent requirement on both the parties and also on the Superannuation Trustee in relation to the drafting of the Orders and acts or things to be done to ensure the super split takes place. It is essential to engage a specialist Family Lawyer in the superannuation splitting as part of your property settlement. Contact us to find out how we can help you.

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