

Super and Divorce

In the event of a marriage breakdown, superannuation can be divided just like other assets. Separating superannuation assets involves the couple entering into a financial agreement or if an agreement can't be reached, a Family Court order will determine how assets are divided.

A superannuation agreement sets out the arrangements for the separation of your super, and can be made before, during or after marriage breakdown.

Superannuation agreement

Who is eligible?	Who is not eligible?
<ul style="list-style-type: none"> • Married couples • Couples intending to marry (and subsequently do marry) • Same sex couples • Couples in de facto relationships 	<ul style="list-style-type: none"> • Couples with a pre-nuptial agreement

What are the superannuation trustee's obligations?

For valid requests in relation to a superannuation agreement or court order, the superannuation trustee must:

- Provide information about the superannuation policy to either of the parties including the account balance, details of fees and clarification regarding whether or not the policy can be split.
- 'Flag' the superannuation policy to prevent withdrawals until a decision is made about how the funds should be split.
- Split the superannuation policy.

How to make a request

All requests must be made in writing by an eligible person i.e. the member of the fund, spouse of the member or anyone who intends to enter into an agreement with the member.

What protections are in place to protect each party?

A payment flag restricts the trustee from transacting on the relevant policy until a flag lifting the agreement or order is issued.

- A flag can only be applied after the parties separate.
- A payment flag cannot be applied to superannuation income stream payments (i.e. pensions).

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Creation of new interest

The non-member spouse must instruct the trustee whether his or her portion of the benefit is to be:

- Rolled over to another fund, and name the destination fund.
- Used to create a new account in the existing fund
- If eligible, paid out as a lump sum.

Features of payment splitting

- The terms of the split can be decided by the two parties to the agreement or by the court ordering the terms.
- The superannuation policy must be a splittable payment according to the legal definition.
- The balance of the fund must be greater than \$5,000.
- A payment splitting agreement continues to operate after the death of a member or non-member spouse.
- A superannuation agreement can deal with a superannuation policy that is acquired at a later date.
- A superannuation policy does not have to be split 50:50, up to 100% of a member's entitlement may be paid to a non-member spouse.

Tax status or components of the payment

The funds in a superannuation account are classified according to tax status. The tax status, or 'component', is determined by the type of contribution and whether any tax has been paid on the money. The component determines how much tax is to be deducted when the funds are withdrawn from super. There are three different components, tax free, taxable – taxed element, and taxable – untaxed element.

On agreement or court order, the trustee will create a separate account for the non-member spouse. The trustee must also ensure that the proportion used for the overall payment split is also used to divide all of the member's benefit components.

Regardless of whether they are now in the member or non-member spouse's name, the benefits will retain their original preservation status and the amount will be transferred proportionately.

A point to note is that the service date will not be transferred to the new account. The eligible service period for the non-member spouse is the date that the new interest is created. The member retains their original eligible service period date.

Preservation

Regardless of whether they are now in the member or non-member spouse's name, the benefits will retain their original preservation status and the amount will be transferred proportionately.

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