

Family Law: Superannuation Splitting Orders



Article by Townsville Family Lawyer, [Courtney Aitken](#)

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Context

If you have separated from your partner or spouse, it is likely you will need to complete a property settlement.

There are 4 steps to follow in working out an appropriate property settlement.

You can find an explanation of these steps in our [Client Library](#) on our website: [Property Settlement The Four-Step Process](#)

Superannuation is considered to be 'property' and so it is included in the property pool to be divided. This article answers a few of the common questions that clients ask about Superannuation.

What is a Superannuation Split?

Some, but not all, property settlements require a superannuation split to happen. This is where an amount from one party's superannuation is transferred to the other party's superannuation account. The amount that may be transferred depends on a lot of different things, and every case is different.

If I am to receive Superannuation, can I receive it as cash?

The short answer is no.

The superannuation amount will be transferred to your superannuation fund, and will become part of your interest in that fund. You can only withdraw the funds if you tick the boxes required by the superfund to do so. For example – you usually can only withdraw funds if you have reached your preservation age or have been diagnosed with a terminal illness.

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Is the superannuation I have earned since separation protected? Is it excluded from the property pool?

The short answer is no.

Step 1 of the property settlement process is working out all the assets, liabilities, and financial resources owned by each party *at the time of working out their property settlement*, not at the time of separation.

This is a reason (and there are many other reasons) to obtain customised family law advice as soon as possible after separation.

Are Court Orders required for a Superannuation Split?

The answer here is - yes.

For a Superannuation Split to take place, the Trustee of the superannuation fund will *require* either:

- Consent Orders, which are orders agreed between the parties, filed and approved by the Court,
 - Court Orders made by a Judge, or
 - A Binding Financial Agreement, which is a document that must be signed by both parties and each of their lawyers.
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We recommend obtaining legal advice from an experienced Family Lawyer that specifically addresses your situation.

Navigating superannuation splitting orders can be complicated even if you are familiar with family law. Superannuation is often a significant amount and should always be carefully considered. It is *always* worth speaking with an experienced family lawyer to obtain advice about this.

When orders – even when *consent* orders – are drafted, they must be worded carefully and correctly and refer to specific sections of the Family Law Act. The Trustee of the superannuation fund must be given notice about the order, before it is made into an order, or becomes part of a Binding Financial Agreement. The Trustee of the superannuation fund cannot transfer superannuation if they receive only an informal agreement.

Receiving a superannuation splitting order can make all the difference in securing your future. It is important that you receive independent legal advice as soon as possible after separation, to ensure your interests are protected.

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O'Shea Dyer Townsville has experienced lawyers who practice exclusively in Family Law

Everyone's situation is unique.

We always recommend seeing an experienced family lawyer so you can discuss your situation and obtain customised advice about how this process specifically applies to you.

We offer first appointments with experienced family lawyers for \$220 - a low fixed fee so that everyone can afford to obtain advice about their situation.

We are here to help you.

Call us on 4772 5155 to make an appointment.