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## Superannuation and separation: Who keeps the money?

A divorce from your husband or wife, or a separation from your de facto, could mean a division of your assets and debts, whether they're held separately or together, and superannuation is no exception.

Another thing to note is even if one of you hasn't contributed to super for many years, that person could still be entitled to a percentage of the other's super.

We explain some of the key points below. And, if you're a de facto couple living in Western Australia, remember different rules may apply as you're not subject to the same superannuation splitting laws.



## How is super divided?

A superannuation agreement can be put in place before, during or after your relationship, as part of a broader 'binding financial agreement'. This agreement can specify how super is to be split upon separation or divorce.

If you and your partner don't have a binding financial agreement in place already but have agreed how you would like super to be split, an Application for Consent Orders can be filed in court without your attendance to formalise the arrangement you've both come to.

If you can't come to an arrangement together, you might instead look to obtain Financial Orders, under which a court hearing will determine how super is to be split between the two of you.

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Because there are rules around when super can be accessed (for instance, you may need to have retired from the workforce), remember that splitting super won't necessarily result in an immediate cash payout, as super is treated differently to other assets and debts.

### **What does the process involve?**

You may want or need to get information regarding the value of the superannuation that is to be split. And, you'll need to provide various forms to the super fund to get this, which you can locate in the Superannuation Information Kit on the Federal Circuit Court of Australia website ([www.federalcircuitcourt.gov.au](http://www.federalcircuitcourt.gov.au)).

You can do this if it's your super fund, or your ex-partner's super fund, but keep in mind fees for providing this information may be payable by the person who has requested the information. Depending on your circumstances, you may also wish to establish a 'flagging agreement' whereby the super fund is prevented from paying out any super until the flag is lifted, which may also result in a fee. Once the super splitting order is made, whether by consent or after a court hearing, you'll also need to provide a copy of the order to the super fund for it to be effective.

### **Splitting super - what to keep in mind**

Some people prefer to avoid lengthy disputes by choosing to forgo some of their entitlements. The trouble with doing this is that it may have significant financial consequences down the track, so it's important to be armed with all the information you can to ensure the decisions you make are sound.

Working out what you're entitled to can be complicated, which is why it's important to seek legal advice, and regarding other financial matters, you may wish to contact us.

Source: AMP