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Family law and superannuation:

what you need to know

When a marriage or de facto relationship breaks down it can be a stressful time and the task of separating finances can often add to the pressure. Personal financial advice during this time can help you make the tough financial decisions, such as dividing assets and splitting superannuation.

Whenever there is a change to your financial situation, a review of your financial plan is necessary – even more so when a complicated matter like splitting superannuation is involved.

What is the first step?

When a marriage or de facto relationship breaks down, many couples choose to separate their finances by going through a **property settlement**. In this process, getting financial and legal advice is essential.

A property settlement is the legal process of dividing a couple's assets when they become separated or divorced. Assets may include the family home, investment properties, ownership in a business, valuables, investments and savings. A property settlement can be reached by mutual agreement, or where an agreement can't be made, the court can determine the settlement.

Superannuation is also included as an asset that can be divided as part of a property settlement. All or part of a superannuation benefit can be transferred from one spouse to the other. This also applies to de facto couples (including same sex relationships) living together on a genuine domestic basis and relationships registered under particular State or Territory Laws. A married couple living separately does not qualify. Couples have the option of drawing up a financial agreement on how superannuation is to be divided. This can be made at any time during the relationship.

What parts of superannuation can be split?

Superannuation benefits (both accumulation and defined benefits), allocated pensions, complying pensions and annuities can all be split in a divorce or de facto relationship breakdown. Accounts with a balance of less than \$5,000 cannot be split under Family Law.

Splitting superannuation

The process of splitting superannuation can be broken down into six steps:

- 1. Request for information:** a request for information is made by either spouse, regarding the details of a super benefit.
- 2. Response to request:** a response is made with the details of the super benefit.
- 3. Payment flag:** flagging an account means putting a hold on most types of withdrawals. Placing a flag on an account is not essential. It's a precaution to be used if a settlement cannot be reached immediately.
- 4. Settlement:** the couple, or the court, decide the settlement terms and the proportions of the benefit each spouse will receive.
- 5. Splitting instructions:** instructions are sent, indicating the method and proportion of the split.
- 6. Splitting the benefit:** part or all of the member's superannuation is transferred to the non-member spouse.

The role of your financial adviser

For most people, a relationship breakdown is extremely stressful and an emotional upheaval. The thought of making important decisions can be overwhelming. A financial adviser can provide you with knowledge and guidance to help you feel more confident about the decisions you make about your financial future.

A financial adviser in conjunction with your legal adviser can guide you through the process by:

- determining whether your superannuation can be split
- helping you complete the request for information
- interpreting the valuation information
- identifying exempt withdrawals
- interpreting splitting instructions issued by the court
- letting you know any obligations you may have towards the super fund.

A financial adviser can also assess the impact on your overall financial situation and provide a recommendation about appropriate investments for your portion of the settlement. They will then provide ongoing advice regarding your super benefits and general financial position.

The importance of legal advice

Both spouses will also need to appoint a legal adviser to split a superannuation benefit of one of the parties. Even if you don't go to court, certain parts of the superannuation splitting process require you to declare that you have received independent legal advice, and your legal adviser to certify that they have provided advice.

A legal adviser will also have experience in relationship breakdown procedures and can assist you through the property settlement by:

- advising you on the relevant laws and how they apply to your situation
- providing you with guidance on the division of assets and your entitlements
- assisting you with any documentation that you may need during the process
- representing you in court if necessary.

Speak to us for more information

The process of splitting super is complicated but can be made easier with the right advice. Contact us and we will work together with you and your legal adviser.

Important Information

This general advice has been prepared without taking into account your particular financial needs, circumstances or objectives. This advice is based on Financial Wisdom Limited's understanding of current law as at 15 April 2010 and its continuance unless stated otherwise. While every effort has been made to ensure the accuracy of the information, it is not guaranteed. You should obtain professional advice before acting on the information contained in this publication.

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