

Whilst divorce and family breakdown can take a terrible toll on the individual and the family, good financial advice during this time can make a significant difference to your future financial well being.

When a marriage breaks down, most couples choose to separate their finances by going through a property settlement.

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, you can have the court 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 does not apply to de facto or same sex couples. Couples have the option of drawing up a financial agreement on how superannuation is to be divided. This can be made before, during or after the marriage.

Getting advice is essential

The process of splitting super is complicated but can be made easier with the right advice.

Financial advice

For most people, a marriage 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.

Financial advisers are experienced professionals, familiar with superannuation and investment issues. They have the expertise to provide you with information about the impact of marriage breakdown on your superannuation entitlements, or those of your spouse.

In addition they can:

- tell you what to expect once settlement has been reached

- let you know any obligations you may have towards the super fund, and
- provide a recommendation about appropriate investments for your portion of the settlement.

Legal advice

Both spouses 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 also require your legal adviser to certify that they have provided advice. For example, a superannuation provider will not split a superannuation benefit unless it receives confirmation of this, or an order from the court.

A legal adviser will also have procedures experience in marriage breakdown 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, and
- representing you in court if necessary.

Understanding the division of assets

Dividing property

Property settlements decided by the courts go through four phases.

Phase 1

The first phase is an information gathering exercise in which all financial assets and liabilities of the couple are identified and valued.

Phase 2

The second phase assesses the contribution of each partner toward the couple's total assets. This contribution is not solely based on who earned the money to acquire the assets; the role of child-rearing and home-maker is viewed as an equal contribution, particularly in longer marriages.

Phase 3

Thirdly, any disparity in the financial positions of the two parties into the future is considered, and an adjustment is made if it is justified. This may occur where one partner has been out of the workforce raising children while the other partner has continued to build a career and is earning, or has the potential to earn, a higher income.

Phase 4

The final phase is a check to see if the final result is fair.

What superannuation products can be split?

- Superannuation benefits (both accumulation and defined benefits).
- Allocated pensions, complying pensions and annuities.

Accounts with a balance of less than \$5,000 cannot be split under Family Law.

If you are not sure which type of benefit you or your former spouse has with their respective Superannuation fund provider, the table below may help.

Type of benefit	Products	Description
Accumulation benefit	<ul style="list-style-type: none"> • Roll Over Funds • Personal Super • Employer Super 	The amount of the superannuation entitlement is equal to the total contributions made, plus investment earnings, less any fees and taxes.
Allocated Pension (also known as an account based pension)/Term Allocated Pension	<ul style="list-style-type: none"> • Pension Plans • Complying Pensions • Annuities 	This is a type of retirement income arrangement. The individual invests a lump sum, and then draws down a pension at regular intervals each year.

Making a request for information

For superannuation to be considered in any property settlement, generally the first step is to determine the value of the benefit. This information must be requested in writing through the Request for Information Form (included in this guide).

This request can be made as either part of an agreement made prior to marriage, during marriage or as part of a marriage breakdown process.

Once a request for information is received, we provide details about the member's superannuation benefit. This information can be used by the parties involved, or the court, to determine splitting instructions. Your legal and financial advisers can also make recommendations based on the information.

Who can request information?

You can request information on a superannuation benefit if you are:

- a member of the superannuation fund
- the spouse of a member of the fund, or
- any other person (in the case of an agreement prior to marriage) intending to enter into an agreement with the member regarding splitting superannuation, in the event of breakdown of the marriage.

The information is only provided to the person who makes the request.

What information is supplied?

The information provided by us varies depending on whether it's about a superannuation benefit or a pension. The information we send will include the account balance, superannuation component breakdown, preservation status, the member's eligible service period and other information to allow you or your financial adviser to accurately value the superannuation benefit.

Your financial adviser can help you interpret this information.

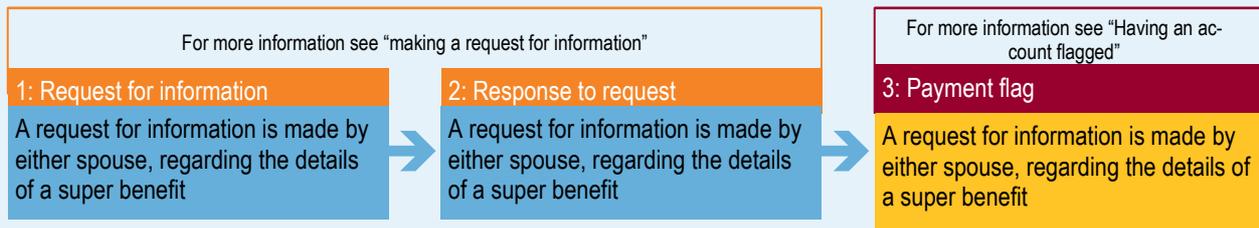
When you complete the Request for Information Form you are able to nominate a date for when you would like the information to be current. If you don't nominate a date, we will give the information as at the date we complete your request.

The member's address and contact details are **not** included in the information.

Please note: If the request is made by someone other than the member (i.e. the member's spouse), we are not permitted to inform the member that the request has been made.

Overview of the process

This diagram shows the steps involved to split a superannuation benefit.



A financial adviser can help you through the process by:

- Determining whether in your case, super can be split
- Assisting you in completing the Request for Information Form.
- Interpreting the valuation information
- Assessing the impact on your financial situation.
- Identifying exempt withdrawals.

Having an account flagged

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. It may also be used in cases where the superannuation benefit is not to be split until the member reaches retirement, which could mean the account is flagged for a much longer period.

A flag can be placed either by an agreement of the two parties or by order of the court. Your legal adviser can help with the required documentation. Once a valid request is received, an account is flagged within the timeframe specified in the agreement or court order. Both the member and their spouse will be notified once the flag is in place.

Which withdrawals are exempt from being flagged?

Not all withdrawals from a superannuation account can be stopped by having the account flagged. Exempt payments include:

- payments made on compassionate grounds
- payments made because a member is in severe financial hardship
- income protection insurance benefits, provided these payments are a regular payment (that is, not a lump sum), and are made within two years of the first payment
- some death benefit payments (see below)
- fees, insurance premiums, taxes and surcharges, and
- pension income payments.

Please note that these payments cannot be split either.

Which death payments cannot be flagged or split?

Some superannuation payouts on death cannot be flagged or split. This means that a benefit could become payable even if the account is flagged. You should speak to your financial adviser if you think this situation may apply to you.

When can a flag be removed?

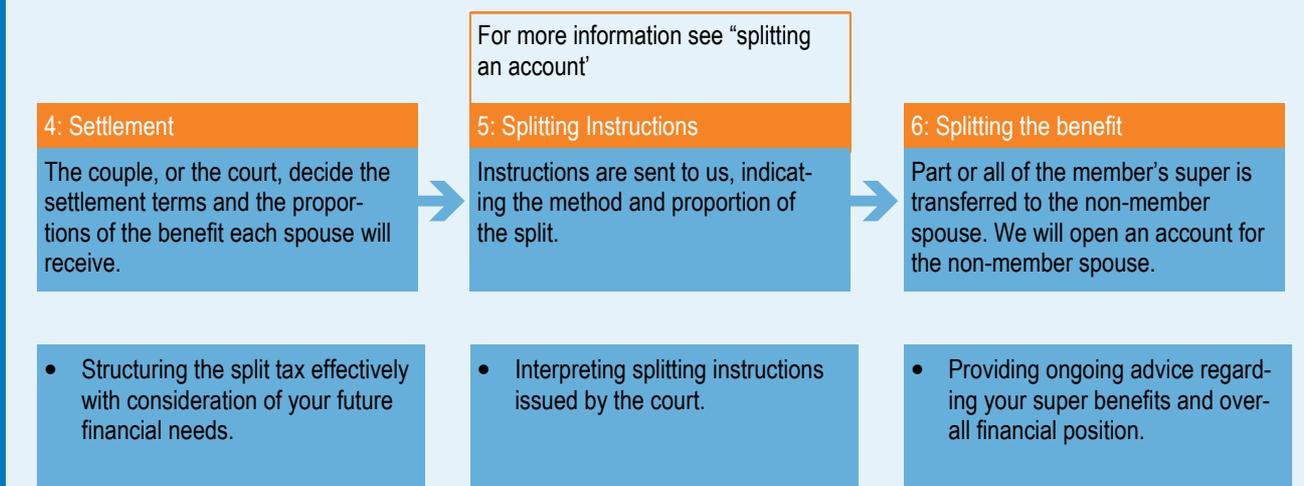
A payment flag can be removed either by an agreement between the two parties or by court order. If you and your spouse agree to lift a flag, you will need to provide evidence that you have both sought advice from a legal adviser about the implications.

This evidence must include:

- a statement by each party that they received independent
- legal advice, and
- a statement by both parties' legal advisers stating that advice
- was given.

Both parties will be sent notification once the flag has been removed.

Overview of the process



Splitting an account

Some couples reach a property settlement through a mutual agreement. For those who are unable to agree, the Family Court can impose a property settlement and divide superannuation between the parties.

Once a decision has been reached, we are sent splitting instructions. These specify how the super will be divided. If a settlement is reached by an agreement, we will also require the following documents in order to apply the splitting instructions:

- a statement by each party that they have received independent legal advice
- a statement by both parties' legal advisers stating that advice was given, and
- a copy of the separation declaration which is less than 28 days old or a Decree Absolute.

The respective Superannuation manager use the method stated in the agreement to calculate the split. Both parties are then notified of the split.

What do I need to do as the non-member spouse?

If you are not the member of the fund, you will need to provide us with your full name, address, contact details and date of birth (if you have not previously done so).

Providing this information enables us to contact you regarding your portion of the benefit.

You can also elect to not receive your share of the superannuation benefit. This may occur where you have been paid an amount which satisfies your share of the entitlements, or where you have waived your entitlement to any future payments from the split.

If you want to elect this, you should consult your legal adviser.

When is the account split?

Once a property settlement has been reached, superannuation entitlements can be treated in different ways depending on the type of benefit.

In the case of an accumulation benefit or pension, the splitting process commences once the splitting instructions have been received. The money may be transferred either to a new account with us or to another super fund. It may also be paid as a lump sum withdrawal if the benefits are unrestricted non-preserved, or you have met a relevant condition of release.

If you are the non-member spouse and your super entitlements meet our minimum account balance requirements, we will immediately open an account for you, investing the money in the same fund. We will then forward you all the information about the split, for you to make a final decision. Of course, you can choose to remain invested with Colonial First State.

As a result of the Government's 'Better Super' changes, when an account is split on or after 1 July 2007, the taxable and tax-free components will be split proportionately.

The preserved status of the benefits is also split proportionally between the two accounts.

Are there additional fees for the service?

Some funds managers do charge fees for this splitting service. Further, some funds may apply exit fees or early redemption. We will be able to assist in determining the potential fees payable.

It is important that you seek both financial and legal advice if you are considering splitting superannuation assets.

We are able to refer you to a specialist family lawyer if you do not have one in mind already.

Speak to us for more information...

If you would like to know more about Divorce and superannuation, contact our office and talk to us at LifeTime Financial Group. We can give you more detailed information on the best approach for your situation.

This general advice has been prepared without taking into account your particular financial needs circumstances or objectives, and is based on Advice Evolution's Limited's understanding of current law as at 5 June 2009 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 financial advice before acting on the information contained in this publication.

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