

# Family law

Superannuation splitting is done by Court Order or a Settlement Agreement that binds Vision Super, just as it binds the divorcing/separating parties.

## 1 Obtain information about your partner's super

Family Law legislation creates an exception to Vision Super's ordinary privacy obligations, obliging it to provide information about a member's superannuation to a separating/divorcing spouse or partner where that information is sought to assist in the property settlement process.

Vision Super is only obliged to provide this information if it is requested on the Family Court's Form 6, which is available from the Family Court or via its website at [familycourt.gov.au](http://familycourt.gov.au).

If you are using a solicitor, your solicitor will have this form. This information is provided on a strictly confidential basis.

In particular, Vision Super is forbidden from advising its members where a spouse or partner has sought or obtained this information and forbidden from providing contact or address details. If you need to clarify your own superannuation entitlements, you can contact us at any time for a quote or any other information.

From 1 April 2022 a person who is a party to property settlement proceedings in the Federal Circuit Court and Family Court of Australia in relation to their marriage or de facto relationship may apply to a Senior Registry official of that Court for that official to request superannuation information of the person's former spouse or de facto partner from the Australian Tax Office (ATO).

When the Senior Registry official of a Court receives an application for the information of the former spouse or de facto partner, the official may request the ATO to disclose the information for the purposes of the family court proceedings.

Once the information is received the Registry official will then disclose that information to the following:

- (i) the person who made the application and their lawyer and
- (ii) the former spouse or de facto partner and their lawyer.

## 2 Decide how you think the super should be split

Once you know what your spouse's superannuation entitlements are, you and your legal advisers need to decide how the superannuation entitlements should be split. When thinking about this, consider if the superannuation is in the accumulation or pre-retirement phase, or pension phase.

You may decide that a particular dollar amount (this is called a base amount) should be split, or a percentage of the superannuation entitlement. Generally, base amount splits are appropriate for benefits in the growth phase, as only those benefits accrued (not those that might accrue in the future) are factored into the split.

Percentage splits are generally more appropriate for interests in the payment phase. You may need expert advice to assist you to understand the implications of a split.

## 3 Forward the draft order/agreement to Vision Super for approval

This must be done before the court order is made or the agreement signed because if the order/agreement contains terms that Vision Super can't implement, you will have to redraft the agreement or return to court for a fresh order.

## 4 Sign an agreement/obtain a court order

Hopefully you and your spouse/partner will be able to agree on an appropriate superannuation split and you can record this in a written agreement, or get your solicitor to do this. If you can't agree, the court will make an order imposing whatever the judge thinks is the most appropriate split. Vision Super Pty Ltd will then be legally obliged to comply with the terms of the order or agreement that apply to it.

## 5 Forward the agreement/order together with a Regulation 144 Notice

Once the settlement is recorded in an agreement/order, you must forward it to us for implementation, together with a Regulation 144 Notice signed by the person to whom the split monies will be allocated (the receiving spouse) or their representative. The Regulation 144 Notice is available in the forms section of our website: [visionsuper.com.au](http://visionsuper.com.au)

## 6 The split

Once Vision Super has the agreement/order and the Regulation 144 Notice, we will implement the split. If the split has been expressed as a base amount, Vision Super will use that base amount to calculate an appropriate sum to be split, factoring in any market fluctuations so that neither party is unfairly disadvantaged by them.

Wherever possible Vision Super will implement the split by creating a separate account for the receiving spouse with money taken from the member spouse's account.

The receiving spouse then has all of the usual membership rights, including the right to roll that money into a different superannuation fund or access it if he/she is entitled to.

## Non-splittable payments

The law provides that some payments cannot be split. Non-splittable payments include:

- > Income benefits paid on account of the member's temporary disability for a period of up to two years
- > Payments made to the member due to financial hardship, or on compassionate grounds
- > A payment after the death of the member to, or in respect of a child of the member who is: under 18 years old, or dependent on the member to complete his or her education, or physically or intellectually disabled.

## Tax and preservation implications

When a benefit is split, the ETP components of that benefit are split in the same proportion, with the exception to the pre and post 1983 components. The proportion of pre and post 1983 components in the receiving spouse's benefit will be determined by his or her own eligible service date. If the receiving spouse has pre 1983 service recognised in another fund, he or she can rollover any payment to that fund.

In the same way, non-preserved benefits contained in the member's benefit are split in the same proportion as the overall benefit. Preserved benefits transferred to the non-member spouse cannot be paid directly until he or she satisfies a 'condition of release', for example, reaching retirement age, or being totally and permanently disabled.

## Need more help?



### We know super inside out, so you don't have to worry!

If you would like further information about boosting your super, or any of our products and services, please call our Member Services team on **1300 300 820**. You can also refer to our website for forms and other fact sheets.

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