

Super and family law

1 July 2023

All our forms and publications are available at spiritsuper.com.au/forms or call us on 1800 005 166, and we'll send you a copy.



Super is one of the most valuable assets a couple has. Like other assets, such as the family home and investments, many couples split their super when they divorce.

Under family law, when a marriage or de facto relationship breaks down, super can be split through a super agreement between you and your ex-spouse or, if you can't agree, as the Family Court decides.

A lawyer can help you understand your rights and responsibilities, and explain how the law applies to you.

What does the law allow?

There are three main things the super law allows when a marriage or de facto relationship breaks down. You can:

- get information about your spouse's super
- split a super benefit
- flag a super benefit to protect it until a decision has been made.

Asking for information

Who can ask for information?

The following people can ask for certain information from super funds:

- the member
- the member's spouse (includes de facto partners)
- the legal personal representative of the member or spouse
- a person who intends to enter into a super agreement with the member.

You don't have to be a Spirit Super member yourself to ask about your spouse's super with us.

A spouse includes someone you've lived with on a genuine domestic basis as a couple who wasn't necessarily married to you, prior to the end of the relationship.

A super agreement can be made before, during or after a relationship. It can be a standalone document, or dedicated clauses within a financial agreement that deals with other property of the parties. A binding financial agreement is Australia's equivalent of a prenuptial agreement.

We're not allowed to tell a member their spouse has asked for information about their super.

We won't provide either party with information relating to their spouse's address or contact details.

How to ask for information

You need to complete a *Family law request for super information* form.

Splitting your super

Splitting super is where you or your ex-spouse transfer an amount or percentage of your super to the other person's fund. You can make an agreement with your ex-spouse to do this, or the Family Court can order a split.

Things you should know about splitting

- You can only split super after a marriage or de facto relationship has broken down.
- We'll tell you and your ex-spouse the details of the split in writing.
- If you broke up before 28 December 2002 and don't already have a property settlement or maintenance agreement, you may still be able to split super.
- If your ex-spouse's super is transferred to your super account and it's 'preserved', you can't access it until you've met a 'condition of release'. See page 2 for more details.
- If you receive some of your ex-spouse's Spirit Super account, you can either set up a new Spirit Super account (if you don't already have one), or you can transfer this money to another super fund.

This is general information only and doesn't take into account your objectives, financial situation or needs. Before making a decision about Spirit Super, you should consider if this information is right for you and read our *Product disclosure statements*, *Target market determinations* and *Financial services guide*. These are available at spiritsuper.com.au/pds or by calling 1800 005 166. | Issuer is Motor Trades Association of Australia Superannuation Fund Pty Ltd (ABN 14 008 650 628, AFSL 238718), the trustee of Spirit Super (ABN 74 559 365 913). Any advice is provided by Quadrant First Pty Ltd (ABN 78 102 167 877, AFSL 284443) (Spirit Super Advice), which is wholly owned by the trustee. A copy of the *Financial services guide* for Spirit Super Advice is available at spiritsuper.com.au/financial-services-guide or by calling us on 1800 005 166.

How to apply to split super

We can only split a super interest for family law purposes once we receive a final super agreement or court order.

Under the *Family Law Act 1975*, we must be given a copy of draft splitting court orders to review prior to the order being finalised. Where possible, the draft orders should be signed by both parties or their legal representatives.

We then have 28 days to review the draft orders and advise of any changes that may be required prior to it being finalised.

Once the splitting order or super agreement has been completed, the individual who's receiving a super benefit from their former spouse can complete a *Family law regulation 72 notice* form.

When can you access your super?

You can access your super when you:

- reach your preservation age and permanently retire
- reach your preservation age and choose to start a transition to retirement income stream while still working
- change jobs after turning 60
- turn 65 (even if you're still working).

These are called 'conditions of release'.

Your preservation age varies between 55 and 60 depending on when you were born, as shown below:

Date of birth	Preservation age
Before 1 July 1960	55
1 July 1960 – 30 June 1961	56
1 July 1961 – 30 June 1962	57
1 July 1962 – 30 June 1963	58
1 July 1963 – 30 June 1964	59
After 30 June 1964	60

While most people access their super when they retire, there are times when you can access it earlier. For details, see our *Early access to your super* fact sheet.

Not all super can be split

Family law super regulations prevent the splitting of super interests of little or no value.

Specifically, the following types of super interests are considered 'unsplittable':

- super interests with a withdrawal benefit of less than \$5,000
- where benefits of less than \$2,000 each year are being paid as a lifetime or fixed-term annuity
- where benefits of less than \$2,000 each year are being paid as a non-commutable lifetime or fixed-term pension.

A Spirit Super pension is an account-based pension, not a lifetime or fixed-term annuity or pension.

Flagging super

If you put off a decision about how to split super until later, we can flag a member's account. If an account is flagged, we can't pay out any super from that account until you and your ex-spouse, or the Family Court, tells us to.

We can only flag super if a marriage or de facto relationship has broken down.

Are there any fees?

We don't charge fees to provide information about your spouse's account or to split super.

Need advice?

The process involved in divorce can be daunting, particularly when you're emotionally vulnerable. Having financial and legal experts on your side can make the path a lot easier.

If you're thinking about divorce or setting up a binding financial agreement, we recommend you seek professional legal advice about your rights and options.

More information

1800 005 166
+61 3 6270 4800 (if overseas)
info@spiritsuper.com.au
spiritsuper.com.au

GPO Box 1547
Hobart TAS 7001