

Find out your  
super rights!

# Super and family law



This fact sheet provides information about splitting your super when a relationship ends.

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

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. If the couple can't reach an agreement, the Family Court decides on their behalf.

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:

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

We've explored more about these three topics in this fact sheet.

## Asking for information

### Who can ask for information?

Family Law allows the following eligible people to 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 CareSuper member 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, whether you were married or not, before your relationship ended.

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.

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.

### 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.
- If your relationship ended before 28 December 2002 and you 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 this page for more details.
- If you receive money from your ex-spouse's CareSuper account, you can either set up a new CareSuper account (if you don't already have one), or you can transfer this money to another super fund.

### 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 before 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 before it's 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*.

We'll write to you and your ex-spouse to confirm the details of the split once we've processed the request.

### When can you access your super?

You can generally access your super when you:

- turn 65 (even if you're still working)
- are between 60 and 65 and are permanently retired
- stop working for an employer after turning 60, even if you're still working for another employer
- are between 60 and 65 and start a transition to retirement strategy while still working.

These are called 'conditions of release'.

While most people wait until retirement to access their super, there are times when you may need to access it sooner. For details, see our *Early access to your super* fact sheet.

### Not all super can be split

Under family law regulations, super can't be split in certain circumstances.

Super interests are considered 'unsplittable' if:

- the withdrawal benefit is less than \$5,000
- annual benefits of \$2,000 or less are being paid as a lifetime or fixed-term annuity
- annual benefits of \$2,000 or less are being paid as a non-commutable lifetime or fixed-term income stream

Our Retirement Income and Transition to Retirement (TTR) Income accounts are account-based pensions, not a lifetime or fixed-term annuity or income stream.

## Flagging super

If you're not ready to decide how to split super, 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, tell us to.

We can only flag an account if a marriage or de facto relationship has broken down. Retirement Income and TTR Income accounts can't be flagged.

## Are there any fees?

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



### Need advice?

The end of a relationship 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.

 All our forms and publications are available at [caresuper.com.au/forms-publications](https://caresuper.com.au/forms-publications) or call us, and we'll send you a copy.

Here to help

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