

Superannuation and Family Law matters



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Information for REI Super Issued by REI Superannuation Fund Pty Ltd ABN 68 056 044 770

This document contains important information about Family Law matters and how they will be handled by REI Super.

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 an agreement between you and your ex-spouse (known as either a financial or superannuation agreement), or, if not through an agreement, you and/or your spouse can apply to court for orders to split your super on your behalf. This often results in orders being made by consent during court-ordered mediation.

This fact sheet contains a general outline of the relevant law. If you are considering a super split (by agreement or court order), we suggest you seek at least legal advice. 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 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 (by agreement or order) about your super has been made.

We explore more about these three topics in this fact sheet. Please note we use ordinary language here, rather than strict legal terms.

1. Getting information from the Fund

Who can ask for information?

The law allows the following people to ask for information about a member's benefits in a super fund:

- The member;
- The member's spouse (includes de facto partner);
- A person who intends to enter into a superannuation agreement with the member; or
- The legal personal representative of a deceased member or a deceased spouse of the member.

How do I ask for information?

You must complete and submit a Superannuation Information Request Form and Form 6 Declaration – this declares that you are eligible to ask for information. You will find these forms in the Superannuation Information Kit on the Family Court website at www.familycourt.gov.au, alternatively speak to your lawyer.

You must also pay any fee imposed by the Trustee for providing the information (see item 3 below). The fee must be paid at the same time as the Declaration and Application is sent to the Trustee.

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

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

What information will I get?

The Trustee will only provide a non-member spouse with the information required by the legislation (which, generally, includes the value of the member's interest, details of any flags or previous splits in relation to the member's benefit, the fees to be charged, and the preservation and other components of the benefit).

In the event that a Superannuation Information Request Form and Form 6 Declaration is received from someone other than the member of the Fund, the Trustee cannot tell the member that the Application has been received.

How do I contact the Trustee?

In order to ensure prompt action by the Trustee in relation to all Family Law matters it is important that applications for information and other documents dealing with super are sent to the correct address. The Trustee may be unable to take action on a Family Law matter if the documents are not sent to the correct address.

All documents relating to Family Law matters should be sent to:

Family Law Officer REI Super
REI Super
PO Box 832,
Newcastle NSW 2300

2. Professional Advice

The Trustee is not permitted to provide you with legal or financial advice in relation to Family Law matters. We recommend you seek advice from a qualified lawyer and/or speak to a licensed financial adviser about the impact these matters may have on your particular circumstances.



3. Fees payable to the Trustee

REI Super charges a fee of \$350.00 for splitting a superannuation benefit upon receipt of a splitting agreement or court order. This fee will be deducted equally (\$175.00 each) from both parties when the Family Law split has been processed, unless the former spouse receives the entire benefit in which case the former spouse will pay the entire fee. The fee payable to the Trustee is subject to review from time to time.

4. How super can be split or flagged

If certain requirements are met, a superannuation benefit can be split as part of a property settlement either by private agreement between the parties (called a financial or superannuation agreement, which we refer to here as a Splitting Agreement), or by court order (Order).

Similarly, if certain requirements are met, a benefit can also be “flagged” by agreement or by court order.

“Flagging” means that a decision on how to split the benefit has been deferred until a later date. If a benefit becomes payable to the member while a flag is in place, the benefit cannot be paid and the Trustee must notify the parties, or the Court. The Trustee must then wait for further instructions either from the parties (e.g., that they have entered a flag-lifting agreement) or from the Court (e.g., that an order terminating the flag has been made) before the flag is lifted and the benefit can be paid.

“Splitting” means that a decision on how to split the benefit has been made and that a portion is to be allocated to the non-member spouse* from a particular time. (That portion can either be a percentage (e.g., of a pension) or a base dollar-figure (e.g., of a lump sum benefit.) Before an Order is made, the Trustee will need to be given notice to ensure the proposed order can be given proper effect. Once an Agreement is entered or an Order is made, the Trustee will check that the Agreement or Order is valid and will then notify both parties that the Agreement or Order is in place. This notification will also include details of the options available to the non-member spouse in respect of their share of the member’s benefit. It will also set out what action needs to be taken by the non-member spouse, by when and the implications if the Trustee does not receive a reply.

In our experience, most super splits are dealt with by court order. Splitting Agreements are less common, and flagging is unusual.

* The non-member spouse is the member’s spouse or former spouse as referred to in the Agreement or Order. For the purpose of this document, spouse includes individuals in a de facto relationship.

5. When an Agreement or Order is made

When an Agreement or Order is made, a copy should be provided to the Trustee along with any other required documents (your legal adviser will tell you what needs to be done).

If it is a Flagging Agreement or Order, the non-member spouse must also provide the following information to the Trustee:

- The non-member spouse’s full name; and
- The non-member spouse’s postal address;

If it is a Splitting Agreement or Order, the non-member spouse must also advise:

- The non-member spouse’s date of birth; and
- If the non-member spouse is already a member of the Fund, their membership number in the Fund.

6. Allocations of splits and reduction of member benefits

The amount allocated to the non-member spouse will be adjusted to take account of any fees that may apply (refer to item 3 on page 1 for fee details), as well as (in the event of a base-amount split) to take account of interest accruals between the operative date of the agreement or order and the payment date.

The amount allocated to the non-member spouse is not usually immediately available in cash. It must remain in the superannuation system until age 65 in most cases, or until the non-member spouse meets one of the legal conditions that allows their benefit to be paid in cash. If the relevant conditions have been met, the benefit can be paid to the non-member spouse in cash. If the relevant conditions have not been met, the Trustee will typically create a new interest for the non-member spouse in the Fund and credit the allocated amount thereto. Alternatively, if the non-member spouse requests, the Trustee can transfer the allocated amount to another super fund nominated by the non-member spouse.

When a split has been made, the member’s benefit in the Fund will be reduced to reflect the amount allocated to the non-member spouse (including interest), plus any fees payable by the member as outlined above. The reduction in the benefit will be shown on the next member benefit statement.

When allocating the required amount to the non-member spouse, the Trustee must also split some of the tax components of the member’s benefit. The components to be split, and the method by which they are to be divided between the parties, are set down in the legislation.

Need help?

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