

Family law and superannuation

Married couples have the option of splitting their super entitlements on divorce or separation. Following is some important information about Family Law matters and how they are handled by AvSuper.

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 spouse
- a person who intends to enter into a superannuation agreement with the member.

How do I ask for information?

You must obtain the Family Court's Superannuation Information Kit which includes a declaration that you are eligible to ask for information.

In the event that a request for information is received from someone other than the AvSuper member, the Trustee cannot tell the member that the application has been received.

What information will I get?

AvSuper will only provide the information required by legislation. Generally, this is similar to the information provided in a benefit quotation. There is no charge for this information.

However, defined benefit members have the option of requesting a valuation of their defined benefit interest. A valuation will only be provided if specifically requested and a fee of \$250 must be paid before this will be provided. Generally the Family Court will require a valuation for such members.

Professional Advice

AvSuper is not permitted to provide you with any advice in relation to Family Law matters. If you have any queries, it is recommended that you seek legal advice from an appropriately qualified person.

Fees payable to the Trustee

The fees currently payable to the Trustee in relation to Family Law matters are as follows:

Processing and responding to an Application for Information	\$ Nil
Processing and responding to an Application for Information where the value of a defined benefit interest has been requested #:	\$250
Splitting a benefit under a Splitting Agreement or Order*:	\$410 (\$205 for each party)
Flagging a benefit under a Splitting Agreement or Order*:	\$ Nil
Removing a flag under a Flag Lifting Agreement or Court Order*:	\$ Nil

Payable by the applicant and must accompany the Application for Information as outlined above. Cheques for the valuation of a defined benefit interest (where requested by the applicant) must be made payable to the AvSuper Fund.

* Generally split equally between the parties and deducted from the entitlement of each party.

How can super be split?

The superannuation benefit can be split as part of the property settlement either by private agreement between the parties, or by Court Order. A benefit can be 'split' by a Splitting Agreement or Order or 'flagged' by a Flagging Agreement or Order.

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'Splitting' means that a decision on how to split the benefit has been made and that a portion is to be allocated to a member's spouse*.

'Flagging' means that the decision on how to split the benefit is 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 Fund must notify the parties, or the Court. AvSuper must then wait for further instructions from the parties or the Court before paying the benefit.

* The non-member spouse is the member's spouse or former spouse as referred to in the Agreement or Order.

When an Agreement or Order is made

When an Agreement or Order is drafted, a copy must be provided to AvSuper along with any other required documents (your legal adviser will tell you what needs to be done) prior to a final order being made to ensure that the Fund rules enable it to be complied with.

The final Order or Agreement should then be sent to us so we can notify both parties that the Agreement or Order is in place. This notification will include details of the options available to the member's spouse in respect of their share of the member's benefit. It will also set out what action needs to be taken by the member's spouse, by when and the implications if we do not receive a reply.

The non-member spouse must also provide the following information to the Trustee:

- their full name
- their postal address
- their date of birth
- their AvSuper member number, if they are already a member

How do I contact the Trustee?

In order to ensure prompt action by the Trustee for all Family Law matters, it is important that applications for information and other documents dealing with super are sent to the correct address.

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

The Administration Manager
AvSuper Pty Ltd
GPO Box 367
Canberra ACT 2601.

Important notes

1. The amount allocated to the member's spouse will be adjusted to take account of any fees that may apply.
2. The amount allocated to the member's spouse is not usually immediately available in cash. It must remain in the superannuation system until age 65 in most cases, or until the person meets one of the legal conditions that allows their benefit to be paid in cash.
3. The member's benefit in AvSuper will be reduced to reflect the amount allocated to the member's spouse, plus any fees payable by the member. The reduction in the benefit will be shown on the next annual member's benefit statement.
4. When allocating the required amount to the member's spouse, AvSuper 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 legislation.
5. The fees payable to AvSuper are subject to review from time to time and may vary without notice.

This provides a brief summary of Family Law legislation as it applies to superannuation. It is not intended to be and should not be relied upon as advice. You should always seek professional advice for your specific circumstances.