

# The implications of separation and divorce for your superannuation

In the event that your marriage breaks down, your superannuation can be divided just like any other property (family home, investments etc), under Commonwealth legislation that became effective on 28 December 2002. From 1 March 2009, the rules also apply to de facto couples (including same-sex couples) in all Australian states except Western Australia\*. Superannuation assets can be valued and the couple or, if necessary, the Family Law Court, can decide how they are to be divided as part of your property settlement.

\* Western Australia remains under its own state-based legislation for financial resolution for de facto couples.

## 1. Providing information

As superannuation is often a substantial asset, determining how the benefit is to be split can be a very important issue. Accordingly, the law allows your spouse to access information about your superannuation benefit. If we receive a request for information from your spouse (the non-member spouse) or an eligible person, we are obliged to provide it. We are not allowed to advise you that your spouse or other eligible person has applied for information, nor provide your address details to a non-member spouse at any time.

Specific information (defined by legislation) must be provided to an eligible person who requests the information using the prescribed forms. An eligible person includes:

- > You, as the member;
- > Your spouse;
- > A person who intends to enter into a superannuation agreement with you; or
- > The legal personal representative of your (non-member) spouse.

When requesting information, a *Family Law* form must be completed which incorporates a:

- > 'Family Law – Application for information'; and
- > 'Form 6 Declaration' – to certify that the person lodging the application is eligible.

This form is available on our website or by contacting our Helpline. Once completed, please send to Equisuper GPO Box 4303 Melbourne VIC 3001.

## 2. Benefit payment flagging

A benefit payment flag may be put on your benefit via a superannuation agreement or a Court Order. It advises us that an agreement to split your benefit may be made at a later date, and so your benefit can not be paid out or transferred elsewhere. A solicitor can assist with the required documentation.

A benefit payment flag can only be lifted when either:

- > A Splitting Agreement or Court Order is received advising how the benefit is to be split (see below); or
- > A flag lifting agreement is received, signed by both spouses and containing the necessary statements and declarations by each spouse.

## 3. Implementing a Splitting Agreement or Order

A Splitting Agreement instructs Equisuper on how to split your benefit, usually by specifying a dollar amount.

### How Equisuper responds

When we receive a draft Agreement or Order to divide your superannuation benefit, we have 28 days to respond. This allows us to check that everything is in order for the Order or Agreement to be implemented when received in final form. An Agreement takes effect on the fourth business day after a sealed copy is served on the Trustee. We formally notify you and your spouse within 28 days.

In the case of a Splitting Agreement or Order, your spouse will have two options (providing Equisuper determines that the law allows it):

- > Set up an account in their own name within the fund and transfer their entitlement to this account and become a fund member in their own right; or
- > Transfer their entitlement into another complying superannuation fund of their choice.

This brochure is for general information only. It has been prepared without taking into account your personal objectives, financial situation or needs. You should consider whether this information is appropriate to your personal circumstances before acting on it and, if necessary, seek professional financial advice. If you are considering investing in the Equisuper Superannuation Fund ABN 33 813 823 017, you should read the appropriate Equisuper Product Disclosure Statement (PDS) before making an investment decision. You can obtain a PDS via our website or by contacting the Helpline.

The taxation information included in this brochure is a general guide only. As taxation laws are complex and individual circumstances vary, you should seek individual taxation advice from a qualified advisor.

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Contact our Helpline on: **1800 682 626** | Visit our website at: **equisuper.com.au**  
Send any correspondence to: **Equisuper Pty Ltd, GPO Box 4303, Melbourne VIC 3001**

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We will issue a 'payment split' notice asking your spouse what they would like to do with their entitlement. We must receive instructions on how to deal with your spouse's entitlement within 28 days of that notice being issued. If we receive no instructions, the split benefit portion will be moved into a separate account in your spouse's name in Equisuper Personal.

Please note that when allocating the required amount to your spouse, we will reduce your benefit accordingly. The reduced benefit will be shown in your subsequent benefit statements.

In most cases, your spouse will be unable to access their benefit immediately and must wait until they reach preservation age, or meet one of the legal conditions of release that allows their benefit to be paid in cash.

### Do any fees apply?

A family law application fee of \$121 (including GST) will apply when a request for information is made. We will also charge a fee of \$510 for processing an Agreement or Order. This fee will be shared equally between you and your spouse, unless the Agreement or Order enables your ex-spouse to receive all of your benefit. In this case your ex-spouse will be charged the full fee.