Equip Super

Separation and divorce fact sheet

The implications of separation and divorce for your super

In the event that your marriage breaks down, the Federal Government's Family Law Act enables your superannuation to be divided just like any other property (e.g family home, investments etc). Superannuation assets can be valued and the parties or, if necessary, the Family Law Court, can decide how they are to be divided as part of your property settlement.

A de facto relationship may exist where persons are not legally married to each other but, having regard to all the circumstances of their relationship, they have a relationship as a couple living together on a genuine domestic basis. A de facto relationship can exist even if one of the parties is legally married to someone else or in another de facto relationship. Persons related by family cannot be in a de facto relationship.

Requesting information

As superannuation is often a substantial asset, determining how to split your benefits can be a very important issue.

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; or
- A person who intends to enter into a superannuation agreement with you.
- The legal representative is not an "eligible person" but an eligible person (such as the non-member spouse) may direct the super fund to provide the information to their lawyer.

If we receive a request for information from your spouse or another eligible person, we are obliged to provide it and are not allowed to advise you that your spouse or another eligible person has applied for information.

When requesting information, a family law form must be completed. This form is available by contacting Helpline on 1800 682 626. You can also find the **Superannuation information request** form and **Declaration** via the Family Court website at **www.familycourt.gov.au**. Alternatively, speak to your legal adviser. Once completed, please send it to Equip Super, GPO Box 4303, Melbourne VIC 3001.

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.

If a benefit becomes payable to the member while a flag is in place, the benefit cannot be paid and Equip Super must notify the parties, or the Court. Equip Super must then wait for further instructions from the parties or the Court before paying the benefit.

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.

Implementing a splitting agreement or order

A splitting agreement instructs Equip Super on how to split your benefit, usually by specifying a dollar amount.

How Equip Super responds

When an agreement or order is first being considered, a draft should be provided to Equip Super so that it can check whether the agreement or order can be implemented and advise whether any modifications need to be made.

If Equip Super has not previously had the opportunity to comment on a draft order, then the Court is not able to make such an order. However, if for some reason an order or agreement is made without comment from Equip Super, then it may mean that Equip Super is unable to administer the terms set out in the order or agreement. In such circumstances, Equip Super can approach the parties and/or the Court to make a determination.

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 correct for the order or agreement to be implemented when received in final form. A final agreement takes effect on the fourth business day after a sealed copy is served on Equip Super. We formally notify you and your spouse within 28 days.

Equip Super's 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 Equip Super does not receive a reply.

Your spouse may have the following options:

- Set up an account in their own name in Equip Super and transfer their entitlement to this account and become a member in their own right; or

- Transfer their entitlement into another complying superannuation fund of their choice; or
- Withdraw the benefit in cash if eligible (ie they met a condition of release).

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 Equip Super.

When allocating the required amount to the non-member spouse, Equip Super must also split some of the tax and preservation 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.

The exact amount of a non-member spouse's final entitlement and its breakdown into the relevant preservation and taxation components cannot be determined until the day their entitlement is transferred to Equip Super or paid from the fund.

Your benefit will be reduced to reflect the amount allocated to the non-member spouse. The reduction in your benefit will be shown on our next benefit statement.

Do any fees apply?

There are no family law fees in Equip Super either for requests of information or processing an agreement or order.

Getting advice

Equip Super is not able to provide you with 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.

It may also be in your best interest to speak to a licensed, or appropriately authorised, financial adviser about the impact of the Family Law Act on your particular circumstances. Before you make any decisions about your superannuation, we recommend you speak to a licensed financial planner. If you would like to speak to an Equip Super financial planner, please call 1800 065 753, or visit our website **equipsuper.com.au** for further information.

Equip Financial Planning operates on a fee for service basis. Subject to certain conditions, these fees can be debited from your Equip Super account.

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Financial advice may be provided to members by Togethr Financial Planning Pty Ltd (ABN 84 124 491 078 AFSL 455010) – a related entity of Togethr.