

Family Law overview

Laws came into effect on 28 December 2002 that allow divorcing couples to split their superannuation balances between them. Before 28 December 2002, your super was in your name only and no part of it could be assigned to another person.

This means that divorcing couples no longer have to use other assets to help finalise property settlements involving superannuation. Super funds like AGEST are required to act on a Court Order or Superannuation Agreement to split a super benefit into two, in the proportions outlined in the order.

This means that we will split the accumulated account into two separate accounts - one for the member and one for the (former) spouse. The spouse will be able to leave their benefit in AGEST or transfer it elsewhere. Alternatively we may be ordered to 'flag' a benefit for splitting at a later date.

The legislation also allows for a person who intends to enter into a superannuation agreement with a partner (this will usually mean that the person is intending to enter into a pre-nuptial agreement with their partner) to receive certain information about the super account of their partner.

AGEST does not charge any fees in relation to Family Law matters. There is no fee levied when a person requests information or when an account is split in accordance with the legislation.

If you are involved in a family law matter, we suggest that you seek legal and financial advice.

Please note that some of the information contained in this document does not apply to the AGEST Allocated Pension as the legislation has different rules for pension products. For more information, please contact us on 1300 724 378.

Common questions

1. How does the Family Law legislation apply?

You can apply, if eligible, to receive certain information regarding your spouse's or ex-spouse's superannuation account. Once a property agreement has been reached between you and your ex spouse, or a Court Order directs it, a superannuation account can be split between the parties. You can also apply to have a Payment Flag applied to the account, which will generally stop payments being made from the account until the flag is lifted.

2. Who does superannuation account splitting apply to?

The legislation only applies to marriages and not de facto relationships.

3. What if my property settlement has already been finalised?

The law is not retrospective. Any persons whose property settlements were finalised, by Court Order or agreement, prior to 28 December 2002 are not eligible.

4. What should I do if I am currently going through a division of assets?

It is best that you speak to a solicitor regarding this. They will direct you as to the best course of action regarding the division of property, including superannuation accounts.

5. What are Superannuation Agreements?

The parties to a marriage can make a financial agreement, which deals how the property of the couple is to be divided. This is a written agreement entered into between a married couple before, during or after a marriage (with the assistance of independent legal advice). Financial agreements can contain a Superannuation Agreement, which sets out how superannuation interests (accounts) are to be divided upon breakdown of the marriage.

6. What are Splitting Orders and Flagging Orders?

From 28 December 2002, the Court has the power to force the flagging or splitting of a superannuation account if it determines it to be just and equitable. These orders are then served upon the Trustees of superannuation funds who must act upon the instructions.

Requests for Information

1. Can I get information on my spouse's/ex-spouse's superannuation account? How do I apply?

Provided you are eligible, you can apply to receive certain information about a super account for Family Law purposes. You will be eligible if you are the member, the member's spouse (or ex-spouse), or are a person who intends to enter into a superannuation agreement with the member (this will usually mean that you intend entering into a pre-nuptial agreement with the member).

To apply, you must make an application using the Family Law Request for Information form attached and send it to AGEST. You must also complete the Declaration attached to that form, declaring that you are making the enquiry to assist you to properly negotiate a superannuation agreement or to assist you in the operation of the law.

2. Can I get information about my spouse's account over the phone?

Legislation requires you to apply in writing. Information cannot be given over the phone.

3. What information can I get on my spouse's superannuation account?

If you are eligible to apply and have fully completed the Request for Information and Declaration, we can provide you with the information defined within the regulations. You can specify the dates you need for property settlement, and we can give you historical information about the account, as well as the current value of the account. The historical information will generally refer to the annual statement values at 30 June, plus any rollovers or transfers into, or part payments from the account for the period specified. You cannot receive any other details about the member or the account.

4. When will I receive this information?

We will send the relevant information to you within 28 days of receipt of a complete and valid request.

5. Has a Request for Information been received regarding my super account?

Under the Family Law Act 2001 we are not legally allowed to inform you of this.

Payment Flagging

1. What is a Payment Flag?

Parties may agree, or the Court may order, that following the breakdown of the marriage, a member's account should be flagged to prevent most benefit payments and rollouts from being made. Once a member's account has a Payment Flag in place, most payments or withdrawals cannot be made until the flag has been lifted or terminated.

2. What benefits can be paid while a Flag is in place?

Certain payments can still be applied for and paid when a Payment Flag is in force. Payments can be made under any of the following circumstances:

- > Upon receipt of leave from the Court
- > A payment made on Compassionate Grounds or for Financial Hardship
- > A payment made to a member for Total Temporary Disablement, provided it is under 2 years' duration
- > Death benefits paid to a child beneficiary (under age 18)
- > Death benefits paid to a child aged 18 or more for the purposes of education or for special needs.

All of these benefits are potentially payable, however, the member's eligibility to receive such a payment will still be assessed on application.

3. How do I apply to have a Payment Flag applied to my spouse's account?

It is best that you speak to your solicitor regarding this. They can direct you as to the best course of action regarding the division of property, including superannuation accounts.

4. When does the Payment Flag apply?

The Payment Flag will be applied to the account within 3 working days of receiving the relevant documentation.

5. How can I get a Payment Flag lifted?

If a Payment Flag has been applied to an account by agreement between the parties, a subsequent agreement must be received before the Flag is lifted. This agreement can be solely for the lifting of the Flag ("Flag Lifting Agreement"), or it could be incorporated with a payment split agreement ("Flag Termination Agreement").

Alternatively the Court could order that the Flag be lifted. If a Flag was applied with a Court Order, then only a Court Order can lift the Flag.

Account Splitting

1. What is splitting under family law legislation?

Splitting is the dividing of one spouse's superannuation account and the paying of a portion of it into a super account in the other spouse's name. The preservation and tax components of the original member's account apply to any money that is allocated to the non-member spouse. Therefore, any unrestricted non-preserved money can be taken at any time. The non-member spouse must then meet their own conditions of release before any preserved or restricted non-preserved amounts can be paid (eg, retirement etc).

2. How do I apply for a Payment Split?

It is best that you speak to your solicitor regarding this. They can direct you as to the best course of action regarding the division of property, including super accounts. However this is not compulsory and a payment split can be made in the form of a pre-nuptial agreement.

3. When does the Payment Split apply?

After AGEST receives a split agreement or order, both parties will be notified by the fund within 28 days that there is a split pending on the member's account.

If you are the non-member spouse, you will also be notified of your options at this time. For example, you may wish to join as a member of AGEST and keep your account with us or transfer your entitlements to another superannuation fund.

Should we not receive your instructions within 28 days of our notification, you will be deemed a member of AGEST.

Family Law - Request for Information

Please complete all known details. Any information you provide will assist us in processing your request. The information provided on this form will be used by AGEST for Family Law purposes only and will be kept confidential.

1. Type of Enquiry

I am making an enquiry about (please tick):

My AGEST account My current or former partner's AGEST account

Membership Number

1. Applicant's Details

Title (please tick)

Miss Ms Mrs Mr Dr

First name(s)

Family name

Date of birth Gender
 F M

Telephone numbers
Home Work
() ()

Mobile

Home address (street)

Suburb/Town

State/Territory Postcode

Email Address (work or home)

2. Fund Member's Details

If you are enquiring about your own account, you do not need to fill in this section.

First name(s)

Family name

Date of birth (if known) Gender
 F M

Last known home or postal address

Suburb/Town

State/Territory Postcode

Additional Information

Please provide any additional information that may help us identify the superannuation account you are enquiring about. For example, membership number, previous employers, addresses or beneficiaries.

Enquiry Dates

Please provide the dates at which you are interested in receiving a valuation. For example, date of marriage, separation.

Enquiry Date 1
Enquiry Date 2
Enquiry Date 3
Enquiry Date 4

Signature

Date



Family Law - Request for Information

Declaration to accompany your Request for Information

(1) Insert your name

I,

of (address).....

.....

.....

born on

make the following declaration in support of my application to the Trustee of the Australian Government Employees Superannuation Trust (AGEST) for information about:

(Select one option only)

My superannuation account

a superannuation account in the name of.....

.....

who was born on and who is a member of AGEST.

Section A

I am:

(Select one option only)

A member of the fund

The spouse of (name) who is a member of AGEST

intending to enter into a superannuation agreement under Part VIII B of the Family Law Act 1975 with (name) and who is a member of AGEST.

Section B

I require this information to:

(Select one option only)

Assist me to properly negotiate a superannuation agreement

Assist me in connection with the operation of Part VIII B of the Family Law Act 1975

Your signature

Date

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Note: There are penalties in making a false declaration.

Please send this form to:

AGEST Administration
Locked Bag 20
Wollongong NSW 2500

or fax it to us on **1300 664 378**
(or +61 2 4253 6108 from overseas)