

## **FAMILY LAW SPLITS**

For Accumulation Scheme and Account-Based Pension Plan members, the Family Law Act 1975 (Family Law Act) takes account of superannuation entitlements when negotiating settlements resulting from marriage or de facto relationship breakdowns and the splitting of those entitlements between the parties involved.

### **THE FIRST STEP**

The member, their spouse (including de facto spouses) and a representative of the Court have the right to obtain details of the member's superannuation entitlements. A member's prospective spouse also has the right to obtain those details. The Family Law Act prohibits us from giving a member's address details to an applicant and from telling a member that an application for details has been made by their spouse or prospective spouse.

The Family Law Act requires that an application for these details (Valuation Request) includes a declaration in a form prescribed under the Regulations. This declaration is included in the Active Super Application for Information under the Family Law Act form, which is available at [activesuper.com.au](http://activesuper.com.au)

Alternatively, a 'Form 6 Declaration' and a 'Superannuation Information request Form' are available directly from the Family Court of Australia. An application for a Valuation Request can be made in writing to the Trustee.

Information is provided as at the date specified in the application (the 'operative date'). If the Active Super Application for Information under the Family Law Act form is not used, the applicant will need to specify the relevant date at which the information provided is to apply. For example, this could be the date of separation. If no date is specified, the relevant date is taken to be the date we receive the application.

### **WHAT HAPPENS NEXT?**

When we receive a Valuation Request, we then provide the applicant with the value of the member's superannuation entitlements at the relevant date, together with other information, which may be needed to establish a basis for apportioning those superannuation entitlements between the respective parties.

We will not provide any advice as to what might be an equitable basis for apportioning those entitlements. That is a matter for the respective parties to reach

agreement or else have the Family Court do so. Please be aware that all or part of a superannuation entitlement might be subject to compulsory preservation and that there might also be taxation issues to consider. The information we provide will enable these issues to be taken into account.

Superannuation can be divided either by agreement of the parties or by a court order.

For the Active Super Trustee to action any agreement, it needs to comply with Family Law requirements and be served on the Trustee. Alternatively, if the parties cannot agree on how to split their assets, the Family Court can make orders, which include a direction from the court as to splitting, and these would be served on the Trustee.

The Trustee can then notate the member's records from the operative date notified in the order/agreement, and can comply with the procedures for splitting set out in the Family Law Act. The base amount adjusted for interest is transferred to the rollover institution of the non-member spouse's choice in accordance with the terms of the Agreement or Order. The interest allotted to the base amount (being either a positive, negative or nil amount) is based on the chosen investment strategy of the member from the operative time to the date of transfer.

Please note that if the member's benefit is less than \$5,000, it cannot be 'split'.

### NON-MEMBER SPOUSE'S ENTITLEMENT

The non-member spouse entitlement is specified by the court order or agreement as a dollar amount or as a percentage of the value (base amount) of the member's accrued benefit.

In either case, we are required to roll over the amount involved into a separate superannuation account in the name of the spouse. The only exception to this is when the total amount is not subject to compulsory preservation. In this case, the spouse can request direct payment of the total amount.

When the member is in the Accumulation Scheme or Account-Based Pension Plan, the spouse can direct us to open a separate Active Super account, or roll over the entitlement to another complying superannuation scheme. The default arrangement in the absence of any direction is that a separate account will be established within the Accumulation Scheme.

The amount paid into a spouse's account includes the same proportions of the various preservation and taxation components as in the member's own account.

### MEMBER'S REDUCED BENEFITS ENTITLEMENT

The splitting of a member's entitlements occurs by reducing the member's account balance by the base amount at the operative date.

The member is notified of the finalisation of the payment to the non-member spouse and the adjustment made to the member's account is shown on the next periodic statement.

### NEED FURTHER INFORMATION?

If you have any questions, please visit [activesuper.com.au](https://activesuper.com.au) or call Member Care on 1300 547 873 between 8.30am and 6.00pm Monday to Friday.

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