



# I need to change my super beneficiary details

## Description

### Separating from your ex? We can help you sort out retirement plans and estate planning

Whether you're divorcing or separating from a de facto partner, your super is treated as property and is part of your asset pool. Here, we'll give you all the information you need and put you in contact with trusted experts that can help you.

### Separation and superannuation: How it works

Once your relationship has irretrievably broken down, you should update your superannuation beneficiary details to protect to make sure that it is your kids or someone else of your choosing that gets your superannuation entitlements and any death insurance after your death – not your ex.

Plus, you might also need to protect your self-managed super fund account and investments (SMSF). To protect your financial future, you should take stock of all your financial assets – including superannuation.

### What happens to superannuation when you separate?

#### Superannuation splitting law

Under the Family Law Act 1975, superannuation is treated as property. But because it is held in a trust by the Trustee of your super fund, it differs from other types of property. When a relationship ends, the family law provides that superannuation can be “split” – or in other words – divided between former spouses or de facto partners.

#### Superannuation can be split by:

- an order of the Federal Circuit and Family Court of Australia or Family Court of Western

- Australia; or
- by your entering into a superannuation agreement (a financial agreement that deals with a superannuation interest being split between parties).

## What will happen to my super during a divorce or separation?

When it comes to your super in the case of a divorce or separation, there are generally two options to consider:

- Split the super
- Take super into account, but leave it untouched

### **Warning! We advise against deferring your decision regarding your super until retirement.**

1. You should deal with this decision as part of the property settlement. Otherwise, you and your ex can find yourselves in litigation at retirement trying to sort it out – and only if the court accepts. To defer this decision may cause one or the other hardship.
2. Don't delay. Once the property settlement time limit runs out, neither party can apply to divide their super anymore unless they can establish, by way of litigation, that the Court should (a) exercise its jurisdiction and (b) establish their case – also falls into rare circumstances of true hardship to a party.

## How do I change my superannuation beneficiary? (I don't want my ex to get any of the super if I die)

You can do this in two ways:

1. Speak to your super fund about completing a change of death benefit beneficiary (this process can take weeks or months and sometimes super funds reject new nominations when dealing with the member of the fund directly); or
2. Have a lawyer draw up a change of death benefit (and any insurance) nomination. This will remove your ex as your beneficiary and can be enforced.

## What happens to a self-managed super fund?

No matter how amicable your breakup with your former partner is, splitting your self-managed super fund will protect your future retirement plans. It will also help in severing all financial ties which is one of the principles of property settlement under family law.

If you are both Trustees, one of you will need to:

- Have your superannuation transferred into another SMSF of which you are the beneficiary; or
- Have your superannuation transferred into another superannuation fund

Documents will need to be completed by you and your former partner to remove you as a Trustee and Beneficiary (or vice versa) in order to protect and separate your entitlements.

### **Warning! Risks of not doing so:**

- One is that you may not agree with the investment decisions your ex as a Trustee is making on your behalf following separation.
- Another risk is that you may be left open to your ex making bad investments on your behalf without your knowledge in order to dissipate the property pool or to intentionally adversely impact your entitlements.

## **FAQs**

### **Can I use super to buy out my former spouse from the family home?**

No, you can't cash in your super for this purpose. If your former spouse is agreeable to receiving superannuation rather than a cash payment, you can enter into a superannuation agreement.

It is unlikely though, even by consent, that a Court would make a superannuation-splitting order to this effect – for various reasons. It is usually considered unfair for one person, after considerable years together, to be left with the superannuation and the other with the house. This means that one person can't access their settlement until after they reach retirement age. Each case is individual though. Please seek legal advice.

### **What happens to superannuation when you separate?**

Superannuation, like any other asset, can be divided between parties post-separation by mutual agreement or court order.

### **Is super split 50-50 in a divorce?**

There is no 50-50 split rule (despite what your friends or family may have suggested to you) when it comes to the division of assets and property – and that includes superannuation.

### **How can I protect my retirement plans?**

If you are married or in a relationship, you can protect your super and retirement plans with a pre-cohabitation agreement where each person retains their own superannuation in the event of separation.

### **How long after separation can you claim superannuation?**

In the breakdown of a de facto relationship, you must apply to the court for superannuation orders within 2 years of the date of separation if you have been unable to enter into a legally enforceable agreement about superannuation splitting with your ex.

If you have already obtained or intend on obtaining a divorce order, you must apply to the court for superannuation orders within 12 months of the date on which your Divorce Order took effect if you haven't been able to reach a legally enforceable agreement with your ex.

For these reasons and others, most people generally begin attending to the property settlement shortly after separation and often out of financial necessity.

#### **Who gets my super if I haven't made a death nomination?**

If you don't have a written death benefit nomination or haven't made one with your Fund, the Trustee of your super fund will determine who gets your super entitlements and any death insurance, after your death. This will most likely be your dependents. It will also depend upon who makes an application to your super fund; ex partners have been known to do so.

#### **Who is the beneficiary of my super after divorce?**

After divorce or separation, you can nominate a new beneficiary for your super and attached insurance. It can be anyone – your children, relatives, or close friends. Super isn't covered in your Will under Australian law unless you nominate your beneficiary to be your Estate. Carefully considering nominating someone or your Estate is the best course of action – if you do not do so the results will be beyond your control.

#### **How do I stop my ex from getting my super death insurance?**

If you're still married but separated or have separated from a de facto partner and have deferred your decision regarding your super until retirement, your ex could get your super entitlements or death insurance if you haven't changed your nomination. Speak to a lawyer or financial expert today for expert advice and be able to plan for the future with confidence.

#### **Date Created**

February 2023