

Do I have to tell my ex-spouse about my superannuation?

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1. Superannuation in divorces & separation - property settlements

Entitlement to superannuation can be a difficult subject for people as their superannuation is (usually) a result of their working life. However, superannuation is relevant for the purposes of settling property matters after divorce or separation and it must be disclosed to your ex-spouse.

- The Court treats your superannuation as property and it is included in the list of assets and liabilities to be divided between the parties.
- Because superannuation is not an asset that can be accessed immediately (unless the person entitled has reached the required age), superannuation is dealt with differently.
- The Court can “split” one person’s superannuation interest so that some (or all) of one spouse’s superannuation entitlement transfers to the other spouse. It is not paid out in a cash sum but into a superannuation account for the receiving spouse. This can then be “rolled into” another account on behalf of that spouse.
- The parties can get a Family Law Superannuation Valuation from their superannuation funds which will provide a “Family Law Valuation” of the fund for the purposes of negotiation or Court proceedings.

2. What is considered a fair split of superannuation?

When working out a fair property settlement (including Superannuation Split), it is essential to consider the following:

- How much Property and Superannuation did each party have at the commencement of the relationship?
- How much Property and Superannuation is there now?
- What contributions have been made by each party to the welfare of the family constituted by the parties to the marriage, including any contribution made in the capacity of home-maker or parent?
- What direct and indirect financial contributions have been made by each party to the property assets and Superannuation?
- What direct and indirect non-financial contributions have been made by each party to the property assets and Superannuation?

After these factors are considered and determined, parties can usually determine a fair property settlement. If an agreement cannot be reached, the parties can file in the Federal Circuit Court for a judge to make the decision for them. The judge will use the same principles described above. It can be very helpful to have a lawyer guide you through what the court considers as a fair and reasonable settlement - to help you reach a quicker conclusion to the matter.

3. Contact Swanwick Murray Roche for guidance

The law around Property matters is always changing and can be quite complex. For clear legal advice based on your own personal circumstances, please don't hesitate to contact Swanwick Murray Roche and organise an appointment with one of our Family Law Specialists.

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